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BOMBAY BRANCH

OF THE

ROYAL ASIATIC SOCIETY.

TOWN HALL, BOMBAY.

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on 26 June, 2018

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COMMISSION.

L.S. *VICTORIA* R.

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Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To Our right trusty and well-beloved Councillors Sir John Romilly, Knight, Master or Keeper of the Rolls of Our High Court of Chancery, Sir William Erle, Knight, Chief Justice of Our Court of Common Pleas, Sir Edward Ryan, Knight, and Robert Lowe, Vice-President of the Committee of Our Council on Education, and Our trusty and well-beloved Sir James Shaw Willes, Knight, one of the Judges of Our Court of Common Pleas, and John Macpherson Macleod, Esquire, Greeting:

Whereas Our Commissioners appointed to examine and consider the Recommendations of the Indian Law Commissioners who were employed in India, and the Enactments proposed by them for the Reform of the Judicial Establishments, Judicial Procedure and Laws of India, and such other Matters in relation to the Reform of the said Judicial Establishments, Judicial Procedure and Laws, as might, by or with the Sanction of the Commissioners for the Affairs of India, be referred to them, did, in their Second Report dated the Thirteenth Day of December 1855, recommend that, subject to necessary Consideration for the existing Laws and Usages of various Parts of India, "there should be prepared for India "a Body of Substantive Law, in preparing which the Law of England should be "used as a Basis, but which, once enacted, should itself be the Law of India on "the Subjects it embraced:"

And whereas We have deemed it expedient that Commissioners should be appointed for the Purposes of preparing such a Body of Law, and of considering and reporting on such other Matters in relation to the Reform of the Laws of India as might be referred to the said Commissioners by Our Secretary of State for India:

Now know ye, that We, reposing great Trust and Confidence in your Zeal, Discretion, and Integrity, have authorized and appointed, and by these Presents do authorize and appoint, you the said Sir John Romilly, Sir William Erle, Sir Edward Ryan, Robert Lowe, Sir James Shaw Willes, and John Macpherson Macleod to be Our Commissioners for the Purposes aforesaid.

And We do by these Presents give and grant to you, or any Three or more of you, full Power and Authority to call before you, or any Three or more of you, such Persons in the Service of the Crown, and all such other Persons as you may judge necessary, by whom you may be informed of the Truth in the Premises, and to inquire of the Premises by all other lawful Ways and Means whatsoever.

And We do hereby give and grant unto you, or any Three or more of you, full Power and Authority to cause all or any of the Officers and Clerks in the Service of the Crown to bring and produce before you, or any Three or more

of you, all Records, Orders, Books, Papers, and other Writings in the Possession of Our Secretary of State for India.

And Our further Will and Pleasure is that you do, as soon as the same can conveniently be done (using all Diligence), certify unto Us, under the Hands and Seals of you, or any Three or more of you, what you shall have done in the Premises.

And We further will and command, that this Our Commission shall continue in full Force and Virtue, and that you Our said Commissioners, or any Three or more of you, shall and may from Time to Time proceed in the Execution thereof, and of every Matter and Thing therein contained, although the same be not continued from Time to Time by Adjournment.

And for your Assistance in the due Execution of this Our Commission We have made choice of Our trusty and well-beloved William Macpherson, Esquire, to be Secretary, and Our trusty and well-beloved Neil Benjamin Edmonstone Baillie, Esquire, to be Assistant Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to use from Time to Time as Occasion shall require.

Given at Our Court at Windsor, the Second Day of December in the Year of our Lord One thousand eight hundred and sixty-one, and in the Twenty-fifth Year of Our Reign.

By Her Majesty's Command,

(Signed) CHARLES WOOD.

REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

Your Majesty having been pleased to issue a Commission authorizing and appointing us to prepare for India a body of substantive law, in preparing which the law of England should be used as a basis, but which, when once enacted, should itself become the law of India on the subjects which it embraced, and to consider and report on such other matters in relation to the reform of the laws of India as might be referred to us by Your Majesty's Secretary of State for India; we applied ourselves to our duties without any delay.

By a letter from Your Majesty's Secretary of State for India, we were informed that it did not appear to him necessary that we should postpone the submission of all report of our proceedings until the completion of the duty assigned to us by Your Majesty's Commission. He requested that, unless there was any objection to such a course, the result of our labours on one branch of civil law might be reported before we entered on the consideration of another branch; as the plan of successive reports on the various departments of law would greatly facilitate the necessary measures which must be taken in India, for giving effect to our recommendations.

Finding that by various classes of persons not professing the Hindoo or the Mahomedan religion a want of substantive civil law was most complained of, and that a law to regulate the devolution of property on death was most urgently required by those classes, we have, in the first instance, directed our attention to the preparation of a law of succession and inheritance, generally applicable to all classes other than the Hindoos and Mahomedans, both of which great portions of the population have laws of their own on this subject. We have now finished that undertaking, and following the course marked out for us, we proceed to submit in this Report a draft of the rules which we have resolved to propose. We shall premise a few explanatory observations.

We have not judged it advisable that the rules for the devolution of moveable property should be (as in England) different from the rules for the devolution of immoveable property. The English who possess immoveable property in India, generally look upon it merely as a temporary investment, not intending to establish their families there permanently. Nor are the Armenians, the Parsees, or any of the classes to whom the new law is intended to apply, in the habit of making a distinction between the succession to moveable and to immoveable property, any more than the Hindoos and Mahomedans themselves.

We propose, therefore, that the general law of India shall make no distinction in this respect, but that the devolution of property of every kind shall be governed by one system of rules.

It has been necessary for us in one or two cases to introduce provisions affecting rights as between living persons. We propose that a man shall not, through the mere operation of law, acquire by marriage any interest in his wife's property during her life, but that she shall continue to possess the same rights with reference to it as if she were unmarried, and shall have full power to dispose of her property by will.

We propose, in case of intestacy, to give a widow the same rights in respect of all the property of her husband, as a widow has in England in respect of her husband's personal property; providing at the same time that when there is a widow and no kindred of the intestate, the whole property shall belong to her, instead of one half going to her and the other half to the Crown. For this provision, if it shall be approved, Your Majesty's gracious sanction previous to enactment will be requisite.

The husband, where he survives his wife, is to have such rights in respect of her property as the wife has in respect of his property where she is the survivor.

Such powers as we propose to confer on the wife are frequently reserved to her even in England by the terms of her marriage settlement; and we believe that the introduction of the English property-law of husband and wife would not be acceptable to any of the classes for whom these rules of succession are intended.

We propose to omit the rule of the English law by which, in cases of total intestacy, anything which a child may have received from the father in his lifetime by way of advancement, is deducted from his share of his father's estate. This rule, though founded upon a desire to equalise as far as possible the benefit derived by children from their father's property, often fails to effect that object, and proves productive of considerable inconveniences. It tends to encourage minute and difficult investigations of matters of family account, and it frequently interferes with the arrangements of a father who has given property to a child by way of advancement, and yet has not seen fit to make any alteration in his testamentary dispositions; and these evils, which are often felt in England, would be still more felt in India.

We have provided that persons of either sex shall at the age of 18 be entitled to make a Will, and be of age for all purposes. This is the age at which the Courts of Wards withdraw from the management of the estates of youthful landholders.

In all that relates to the execution and revocation of Wills, we have taken as a basis the Act known as Lord Langdale's (Statute 1 Vict. c. 26.), which is already in force as to all Wills proved in the High Courts of the three Presidencies other than the Wills of Hindoos and Mahomedans. But we have modified its provisions as to execution, which we think would be likely to cause frequent intestacy.

Here, as elsewhere, we have departed from the English law where its provisions appeared to us to be objectionable in themselves, or especially inapplicable to India. Above all things we have aimed at giving effect to the plain meaning of the words of the testator, without endeavouring to do or to say for him that which he has not done or said for himself. We have accordingly discarded the rules by which the English Courts are compelled to presume, in the absence of any intimation of a contrary intention, that where a debtor bequeaths to his creditor a legacy equal to or exceeding the amount of his debt, the legacy is meant by the testator to be a satisfaction of the debt; that where a parent who is under a legal obligation to provide a portion for his child fails to do so, and afterwards bequeaths a legacy to the child, the legacy is meant to be a satisfaction or fulfilment of the obligation. We have in like manner discarded the rule of English law that where a father bequeaths a legacy to a child, and afterwards advances a portion for that child, he thereby adeems the legacy. We have endeavoured so to frame the law in this respect as to prevent the occasion from ever arising, which in England requires a nice balancing of judgment, the exercise of large discretion, the prosecution of a difficult inquiry, and the admission of parol evidence of the intentions of testators.

We have inserted provisions for defining expressions used in Wills to denote kindred and representation, and for giving the legacy absolutely to the first taker, where words are added which are (in legal phrase) words of limitation and not of purchase.

We have restricted the power of creating successive interests in property by Will by providing that interests so created shall not extend beyond the lifetime of persons living at the testator's death, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attain the age of 18, the thing bequeathed is to belong. We have provided that a bequest to a person not born at the testator's death must comprise the whole of the interest of the testator in the thing bequeathed; and that where at the time fixed for the payment of a legacy the person for whom it was intended has not come into existence, the bequest shall have no effect. We have also provided that directions to accumulate the income arising from any property shall be void.

We have likewise provided against death-bed bequests to charitable uses by persons having near relatives.

On the subject of conditions, we have deemed it right to abstain from introducing into India the very refined distinctions which the Court of Chancery has, in questions relating to personal property, borrowed from the Ecclesiastical Courts. We think that the words of the Will should be adhered to where no condition inconsistent with law or morality is sought to be imposed; that all bequests made upon illegal, immoral, or impossible conditions should be void; and that wherever the testator's wishes can be

at present there is no appeal in India, and every case in which there is a difference of opinion in a court composed of several judges as to the construction of any part of the code, ought to be forthwith reported to the legislature. Every judge of every rank whose duty it is to administer the law as contained in the code should be enjoined to report to his official superiors every doubt which he may entertain as to any question of construction which may have arisen in his court. Of these doubts all which are not obviously unreasonable ought to be periodically reported by the highest judicial authorities to the legislature. All the questions thus reported to the Government might with advantage be referred for examination to the Law Commission, if that commission should be a permanent body. In some cases it will be found that the law is already sufficiently clear, and that any misconstruction which may have taken place is to be attributed to weakness, carelessness, wrongheadedness, or corruption on the part of an individual, and is not likely to occur again. In such cases it will be unnecessary to make any change in the code. Sometimes it will be found that a case has arisen respecting which the code is silent. In such a case it will be proper to supply the omission. Sometimes it may be found that the code is inconsistent with itself. If so the inconsistency ought to be removed. Sometimes it will be found that the words of the law are not sufficiently precise. In such a case it will be proper to substitute others. Sometimes it will be found that the language of the law, though it is as precise as the subject admits, is not so clear that a person of ordinary intelligence can see its whole meaning. In these cases it will generally be expedient to add illustrations such as may distinctly show in what sense the legislature intends the law to be understood, and may render it impossible that the same question, or any similar question, should ever again occasion difference of opinion. In this manner every successive edition of the code will solve all the important questions as to the construction of the code which have arisen since the appearance of the edition immediately preceding. Important questions, particularly questions about which courts of the highest rank have pronounced opposite decisions, ought to be settled without delay; and no point of law ought to continue to be a doubtful point more than a few years after it has been mooted in a Court of Justice. An addition of a very few pages to the code will stand in the place of several volumes of reports, and will be of far more value than such reports, inasmuch as the additions to the code will proceed from the legislature, and will be of unquestionable authority, whereas the reports would only give the opinions of the judge which other judges might venture to set aside.

"It appears to us also highly desirable that, if the code shall be adopted, all those penal laws which the Indian Legislature may from time to time find it necessary to pass should be framed in such a manner as to fit into the code. Their language ought to be that of the code. No word ought to be used in any other sense than that in which it is used in the code. The very part of the code in which the new law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the code that provision ought to be indicated. In fact the new law ought, from the day on which it is passed, to be part of the code, and to affect all the other provisions of the code, and to be affected by them as if it were actually a clause of the original code. In the next edition of the code the new law ought to appear in its proper place."

Although the illustrations, we believe, will obviate many questions of construction, and will do much to fix the sense of the law, yet undoubtedly many cases will occur in which there will be difference of opinion among judges as to what the law is. Room will still be left for doubts as to the meaning of rules, and also as to the right application of illustrations; and cases will no doubt arise where the enacted law is silent; in all such cases the judges will be compelled to use their law-supplying power. It will consequently inevitably follow, if no measures are taken to prevent it, that the enacted law will ere long be incumbered with a mass of comments and decisions; and although the number of Chief Courts has been reduced since the letter we have quoted was written, yet such is still the judicial system of India that probably many of those decisions will be opposed to others of equal authority.

We agree with the framers of the Penal Code in thinking that, for the prevention of this great evil, the enacted law ought, at intervals of only a few years, to be revised and so amended as to make it contain as completely as possible, in the form of definitions, of rules, or of illustrations, everything which may from time to time be deemed fit to be made a part of it, leaving nothing to rest as law on the authority of previous judicial decisions. Each successive edition after such a revision should be enacted as law, and would contain, sanctioned by the legislature, all judge-made law of the preceding interval deemed worthy of being retained. On these occasions, too, the opportunity should be taken to amend the body of law under revision in every practicable way, and especially to provide such new rules of law as might be required by the rise of new interests and new circumstances in the progress of society.

We have also to suggest, for the due administration of the law under this Code if adopted, that when cases of difficulty occur no resort should be had to any other system of law for the purpose of authoritatively solving an ambiguity or supplying an omission, and that the judges must decide cases unprovided for by the Code in the manner they consider most consistent with the principles of justice, equity, and good conscience.

In one matter of detail we would suggest an important departure from the course proposed by the framers of the Penal Code. It seems to us deserving of the consideration of Your Majesty's Government, whether it would not be advisable that the reports which, according to that course, would be made to the legislature in India should not rather be made to the Government there, and be then transmitted to the Secretary of State for India, and that the new editions of bodies of law should be prepared in this country.

RULES OF SUCCESSION AND INHERITANCE.

1. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number, and words importing the male sex include the female sex.

2. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.

3 Whenever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British Calendar.

4. The words "zillah judge" include judges of Cities and other officers possessing the powers of a zillah judge.

5. No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done if unmarried.

6. The age of majority shall, in all cases, be eighteen years complete.

7. Succession to the immoveable property of a person deceased is regulated by the Law of India, wherever he may have had his domicile at the time of his death.

Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death.

Illustrations.

(*a.*) A. having his domicile in India, dies in France, leaving moveable property in France, moveable property in England, and property, both moveable and immoveable, in India. The succession to the whole is regulated by the law of India.

(*b.*) A., an Englishman having his domicile in France, dies in India, and leaves property, both moveable and immoveable, in India. The succession to the moveable property is regulated by the rules which govern, in France, the succession to the moveable property of an Englishman dying domiciled in France, and the succession to the immoveable property is regulated by the law of India.

8. A person can only have one domicile for the purpose of succession to his moveable property.

9. The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled: or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.

Illustration.

At the time of the birth of A. his father was domiciled in England. A.'s domicile of origin is in England, whatever may be the country in which he was born.

10. The domicile of origin of an illegitimate child is in the country in which, at the time of his birth, his mother was domiciled.

11. The domicile of origin prevails until a new domicile has been acquired.

12. A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

Explanation.—A man is not to be considered as having taken up his fixed habitation in India merely by reason of his residing there in Her Majesty's civil or military service, or in the exercise of any profession or calling.

Illustrations.

(*a.*) A., whose domicile of origin is in England, proceeds to India, where he settles as a barrister or a merchant, intending to reside there during the remainder of his life. His domicile is now in India.

(*b.*) A., whose domicile is in England, goes to Austria, and enters the Austrian service, intending to remain in that service. A. has acquired a domicile in Austria.

(*c.*) A., whose domicile of origin is in France, comes to reside in India under an engagement with the Indian Government for a certain number of years. It is his intention to return to France at the end of that period. He does not acquire a domicile in India.

(*d.*) A., whose domicile is in England, goes to reside in India for the purpose of winding up the affairs of a partnership which has been dissolved, and with the intention of returning to England as soon as that purpose is accomplished. He does not by such residence acquire a domicile in India, however long the residence may last.

(*e.*) A., having gone to reside in India under the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in India. A. has acquired a domicile in India.

(*f.*) A., whose domicile is in the French settlement of Chandernagore, is compelled by political events to take refuge in Calcutta, and resides in Calcutta for many years in the hope of such political changes as may enable him to return with safety to Chandernagore. He does not by such residence acquire a domicile in British India.

(*g*.) A., having come to Calcutta under the circumstances stated in the last preceding illustration, continues to reside there after such political changes have occurred as would enable him to return with safety to Chandernagore, and he intends that his residence in Calcutta shall be permanent. A. has acquired a domicile in British India.

13. Any person may acquire a domicile in India by making and depositing in some office in India (to be fixed by the Governor General in Council or the Governor in Council, as the case may be,) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in India for one year immediately preceding the time of his making such declaration.

14. A person who is appointed by the government of one country to be its ambassador, consul, or other representative, in another country, does not acquire a domicile in the latter country by reason only of residing there in pursuance of his appointment; nor does any other person acquire such domicile by reason only of residing with him as a servant or as part of his family.

15. A new domicile continues until the former domicile has been resumed, or another has been acquired.

16. The domicile of a minor follows the domicile of the parent from whom he derived his domicile of origin.

Exception.—The domicile of a minor does not change with that of his parent, if the minor is married or holds any office or employment in the service of Her Majesty, or has set up, with the consent of the parent, in any distinct business.

17. By marriage a woman acquires the domicile of her husband, if she had not the same domicile before.

18. The wife's domicile during the marriage follows the domicile of her husband.

Exception.—The wife's domicile no longer follows that of her husband if they be separated by the sentence of a competent court, or if the husband is undergoing a sentence of transportation.

19. Except in the cases above provided for, a person cannot during minority acquire a new domicile.

20. An insane person cannot acquire a new domicile in any other way than by his domicile following the domicile of another person.

21. If a man dies leaving moveable property in India; in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of India.

22. Kindred or consanguinity is the connexion or relation of persons descended from the same stock or common ancestor.

23. Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great grandson, and so downwards in the direct descending line. Every generation constitutes a degree, either ascending or descending. A man's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great grandfather and great grandson in the third.

24. Collateral consanguinity is that which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other. For the purpose of ascertaining in what degree of kindred any collateral relative stands to a person deceased, it is proper to reckon upwards from the person deceased to the common stock, and then downwards to the collateral relative, allowing a degree for each person, both ascending and descending.

25. For the purpose of succession, there is no distinction between those who are related to a person deceased through his father and those who are related to him through his mother; nor between those who are related to him by the full blood, and those who are related to him by the half blood; nor between those who were actually born in his lifetime, and those who at the date of his death were only conceived in the womb, but who have been subsequently born alive.

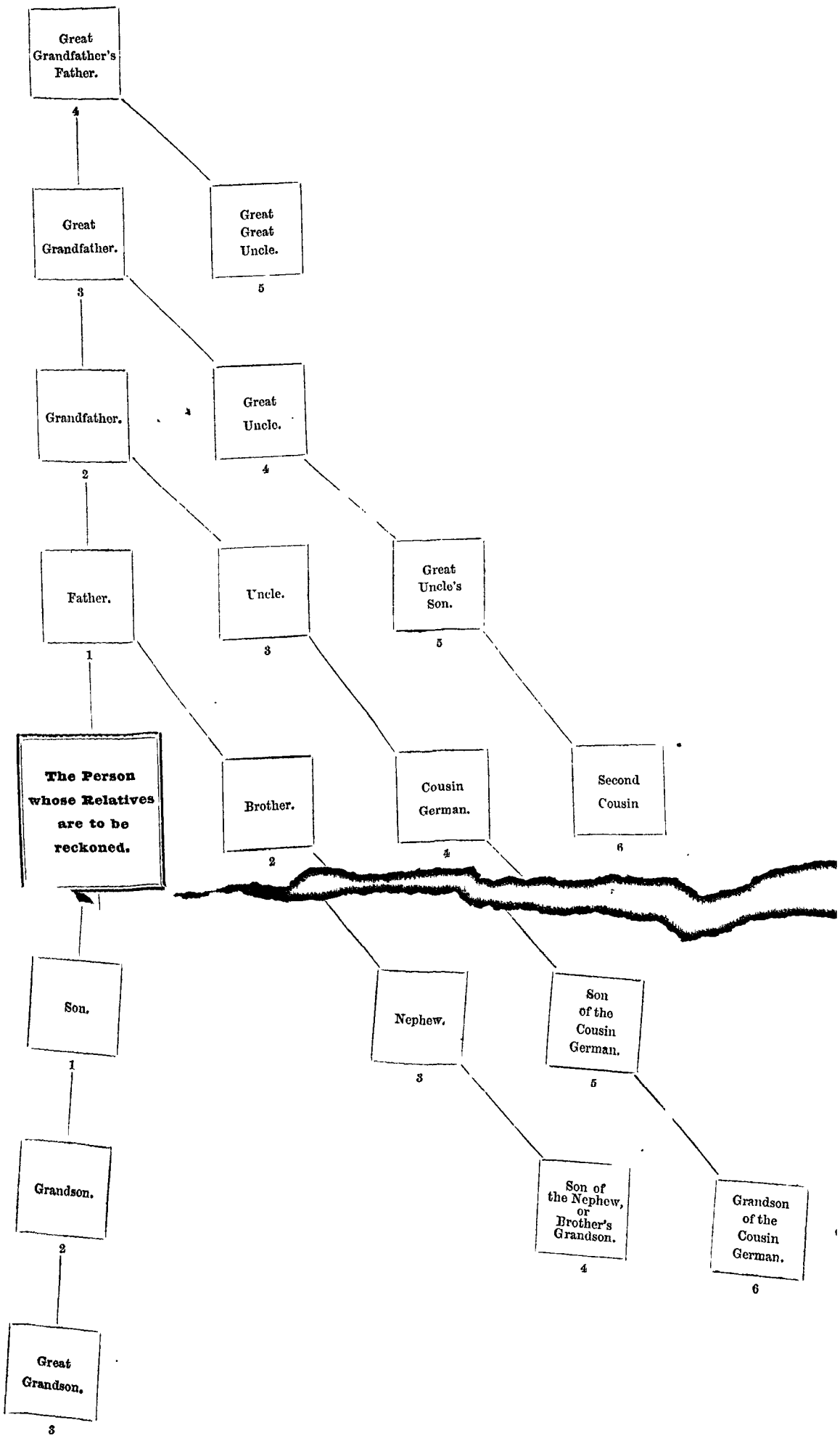
26. In the annexed table of kindred the degrees are computed as far as the sixth, and are marked by numeral figures.

The person whose relatives are to be reckoned, and his cousin german, or first cousin, are, as shown in the table, related in the fourth degree; there being one degree of ascent to the father, and another to the common ancestor the grandfather; and from him one of descent to the uncle, and another to the cousin german; making in all four degrees.

A grandson of the brother and a son of the uncle, *i.e.* a great nephew and cousin german are in equal degree, being each four degrees removed.

A grandson of a cousin german is in the same degree as the grandson of a great uncle, for they are both in the sixth degree of kindred.

TABLE OF CONSANGUINITY.



27. A man is considered to die intestate in respect of all property of which he has not made a testamentary disposition which is capable of taking effect.

Illustrations.

(*a.*) A. has left no will. He has died intestate in respect of the whole of his property.

(*b.* A. has left a will, whereby he has appointed B. his executor; but the will contains no other provisions. A. has died intestate in respect of the distribution of his property.

(*c.*) A. has bequeathed his whole property for an illegal purpose. A. has died intestate in respect of the distribution of his property.

(*d.*) A. has bequeathed 1,000*l.* to B., and 1,000*l.* to the eldest son of C., and has made no other bequest; and has died leaving the sum of 2,000*l.* and no other property. C. died before A. without having ever had a son. A. has died intestate in respect of the distribution of 1,000*l.*

28. Such property devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules herein prescribed.

Explanation.—The widow is not entitled to the provision hereby made for her, if by a valid contract made before her marriage she has been excluded from her distributive share of her husband's estate.

29. Where the intestate has left a widow; if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein contained. If he has left no lineal descendant, but has left persons who are of kindred to him, one half of his property shall belong to his widow and the other half shall go to those who are of kindred to him, in the order and according to the rules herein contained: If he has left none who are of kindred to him, the whole of his property shall belong to his widow.

30. Where the intestate has left no widow, his property shall go to his lineal descendants or to those who are of kindred to him, not being lineal descendants, according to the rules herein contained: And if he has left none who are of kindred to him, it shall go to the Crown.

31. The rules for the distribution of the intestate's property (after deducting the widow's share, if he has left a widow) amongst his lineal descendants are as follows:—

32. Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there be only one, or shall be equally divided among all his surviving children.

33. Where the intestate has not left surviving him any child, but has left a grandchild or grandchildren, and no more remote descendant through a deceased grandchild, the property shall belong to his surviving grandchild, if there be only one, or shall be equally divided among all his surviving grandchildren.

Illustrations.

(*a.*) A. has three children, and no more; John, Mary, and Henry. They all die before the father, [illegible] two children. Mary [illegible] three, and Henry [illegible]. Afterwards A. dies [illegible] leaving those [illegible] grandchildren and no descendant of any deceased grandchild. Each of his grandchildren shall have one-ninth.

(*b.* But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grandchildren, the children of John and Mary.

(*c.*) A. has two children, and no more; John and Mary. John dies before his father, leaving his wife pregnant. Then A. dies, leaving Mary surviving him, and in due time a child of John is born. A.'s property is to be equally divided between Mary and such posthumous child.

34. In like manner the property shall go to the surviving lineal descendants who are nearest in degree to the intestate, where they are all in the degree of great grandchildren to him, or are all in a more remote degree.

35. If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him; and one of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which their parents would have been entitled to respectively if they had survived the intestate.

Illustrations.

(*a.*) A. had three children, John, Mary, and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A. intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(*b.*) A. left no child, but left eight grandchildren, and two children of a deceased grandchild. The property is divided into nine parts, one of which is allotted to each grandchild; and the remaining one-ninth is equally divided between the two great grandchildren.

(*c.*) A. has three children, John, Mary, and Henry. John dies leaving four children, and one of John's children dies leaving two children. Mary dies leaving one child. A. afterwards dies intestate. One-third of his property is allotted to Henry; one-third to Mary's child; and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grandchildren.

36. Where an intestate has left no lineal descendants, the rules for the distribution of his property (after deducting the widow's share, if he has left a widow) are as follows:—

37. If the father of the intestate be living, he shall succeed to the property.

38. If the father of the intestate is dead, but the mother of the intestate is living, and there are also brothers or sisters of the intestate living, and there is no child living of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.

Illustration.

A. dies intestate, survived by his mother and two brothers of the full blood, John and Henry, and a sister Mary, who is the daughter of his mother but not of his father. The mother takes one-fourth, each brother takes one-fourth, and Mary, the sister of half blood, takes one-fourth.

39. If the father is dead, but the mother is living, and if any brother or sister, and the child or children of any deceased brother or sister are also living, then the mother and each living brother or sister, and the living child or children of each deceased brother or sister, shall be entitled to the property in equal shares, the children taking the share which their parents would have been entitled to, if they had survived the intestate.

Illustration.

A. the intestate leaves his mother, his brothers, John and Henry, and also one child of a deceased sister, Mary, and two children of George, a deceased brother of the half blood, who was the son of father but not of his mother. The mother takes one-fifth, John and Henry each take one-fifth, child of Mary takes one-fifth, and the two children of George divide the remaining one-fifth qually between them.

40. If the father is dead, but the mother is living, and the brothers and sisters are ll dead, but all or any of them have left children who survived the intestate, the nother and the child or children of each deceased brother or sister, shall be entitled o the property in equal shares, such child or children taking the share which their respective parents would have taken, if they had survived the intestate.

Illustration.

A. the intestate leaves no brother or sister, but leaves his mother and one child of a deceased sister Mary and two children of a deceased brother George. The mother takes one-third, the child of Mary takes one-third, and the children of George take one-third between them.

41. If the father is dead, but the mother is living, and there is neither brother nor sister, nor child of any brother or sister of the intestate, the property shall belong to the mother.

42. Where the intestate has left neither lineal descendant nor father nor mother, the property is divided equally between his brothers and sisters and the children of such of them as may have died before him, such children taking the shares which their respective parents would have taken if they had survived the intestate.

43. If the intestate left neither lineal descendant, nor parent, nor brother, nor sister, his property shall be divided equally among those of his relatives who are in the nearest degree of kindred to him.

Illustrations.

(*a.*) A. the intestate has left a grandfather or a grandmother, and no other relative standing in the same or a nearer degree of kindred to him. They being in the second degree will be entitled to the property in equal shares, exclusive of any uncle or aunt of the intestate, uncles and aunts being only in the third degree.

(*b.*) A. the intestate has left a great grandfather or great grandmother, and uncles and aunts, and no other relative standing in the same or a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*c.*) A. the intestate left a great grandfather, an uncle, and a nephew, but no relative standing in a nearer degree of kindred to him. All of these being in the third degree shall take equal shares.

(*d.*) Ten children of one brother or sister of the intestate, and one child of another brother or sister of the intestate, constitute the class of relatives of the nearest degree of kindred to him. They shall each take one-eleventh of the property.

44. The husband surviving his wife has the same rights in respect of her property, if she die intestate, as the widow has in respect of her husband's property, if he die intestate.

45. If a person whose domicile is not in India marries in India a person whose domicile is in India, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he or she would not acquire thereby if both were domiciled in India at the time of the marriage.

46. The property of a minor may be settled in contemplation of marriage, provided the settlement be made by the minor, with the approbation of the minor's father, or if he be dead or absent from India, with the approbation of the High Court of the Presidency, or other Court of the last resort in India, having the local jurisdiction.

47. Where a distributive share in the property of a person who has died intestate shall be claimed by a child, or any descendant of a child of such person; no money or other property which the intestate may during his life have paid, given, or settled to or for the advancement of the child by whom or by whose descendant the claim is made shall be taken into account in estimating such distributive share.

48. A Will is the legal declaration of intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

49. A Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

50. A codicil is an instrument made in relation to a Will, and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the Will.

51. Every person of the age of 18 years complete, and of sound mind, may dispose of his property by Will.

Explanation 1.—A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2.—Persons who are deaf, or dumb, or blind are not thereby incapacitated for making a Will if they are able to know what they do by it.

Explanation 3.—One who is ordinarily insane may make a Will during an in[illegible] which he is of sound mind.

Explanation 4.—No person can make a Will while he is in such a state o[illegible] whether arising from drunkenness, or from illness, or from any other cause, t[illegible] does not know what he is doing.

Illustrations.

(*a.*) A. can perceive what is going on in his immediate neighbourhood, and can answer fam[illegible] questions, but has not a competent understanding as to the nature of his property, or the pers[illegible] who are of kindred to him, or in whose favour it would be proper that he should make his Wi[illegible] A. cannot make a valid Will.

(*b.*) A. executes an instrument purporting to be his Will, but he does not understand the nature of the instrument nor the effect of its provisions. This instrument is not a valid Will.

(*c.*) A. being very feeble and debilitated, but capable of exercising a judgment as to the proper mode of disposing of his property, makes his Will. This is a valid Will.

52. A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

Illustrations.

(*a.*) A. falsely and knowingly represents to the testator that the testator's only child is dead, or that he has done some undutiful act, and thereby induces the testator to make a Will in his, A.'s, favour; such Will has been obtained by fraud, and is invalid.

(*b.*) A. by fraud and deception prevails upon the testator to bequeath a legacy to him. The bequest is void.

(*c.*) A., being a prisoner by lawful authority, makes his Will. The Will is not invalid by reason of the imprisonment.

(*d.*) A. threatens to shoot B., or to burn his house, or to cause him to be arrested on a criminal charge, unless he makes a bequest in favour of C., B. in consequence makes a bequest in favour of C. The bequest is void, the making of it having been caused by coercion.

(*e.*) A. being of sufficient intellect, if undisturbed by the influence of others, to make a Will, yet being so much under the control of B. that he is not a free agent, makes a Will dictated by B. It appears that he would not have executed the Will but for fear of B. The Will is invalid.

(*f.*) A. being in so feeble a state of health as to be unable to resist importunity, is pressed by B. to make a Will of a certain purport, and does so merely to purchase peace, and in submission to B. The Will is invalid.

(*g.*) A. being in such a state of health as to be capable of exercising his own volition, B. uses urgent intercession and persuasion with him to induce him to make a Will of a certain purport, A., in consequence of the intercession and persuasion, but in the free exercise of his judgment and volition, makes his Will in the manner recommended by B. The Will is not rendered invalid by the intercession and persuasion of B.

(*h.*) A. with a view to obtaining a legacy from B., pays him attention and flatters him, and thereby produces in him a capricious partiality to A. B., in consequence of such attention and flattery, makes his Will, by which he leaves a legacy to A. The bequest is not rendered invalid by the attention and flattery of B.

53. A father, whatever his age may be, may by Will appoint a guardian or guardians for his child during minority.

54. Every testator, not being a soldier employed in an expedition, or engaged in actual warfare, or a mariner at sea, must execute his Will according to the following rules:—

First.—The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

Second.—The signature or mark of the testator or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

Third.—The Will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his mark to the Will, or have seen some other person sign the Will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses must sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

55. If a testator, in a Will or Codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such document shall be considered as forming a part of the Will or Codicil in which it is referred to.

56. Any soldier being employed in an expedition, or engaged in actual warfare, or any mariner being at sea, may, if he has attained the age of 18 years, dispose of his property by a Will made as is mentioned in Section 57. Such Wills are called privileged Wills.

Illustrations.

(*a.*) A., the surgeon of a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.

(*b.*) A., is at sea in a merchant ship, of which he is the purser. He is a mariner, and being at sea can make a privileged Will.

(*c.*) A., a soldier serving in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.

(*d.*) A., a mariner of a ship in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, in the sense of the words used in this clause, a mariner at sea, and can make a privileged Will.

(*e.*) A., an admiral who commands a naval force, but who lives on shore and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.

(*f.*) A., a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

57. Privileged Wills may be in writing, or may be made by word of mouth. The execution of them shall be governed by the following rules:—

First.—The Will may be written wholly by the testator, with his own hand. In such case it need not be signed nor attested.

Second.—It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.

Third.—If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it shall be considered to be his Will, if it be shown that it was written by the testator's directions, or that he recognized it as his Will. If it appear on the face of the instrument, that the execution of it in the manner intended by him was not completed, the instrument shall not by reason of that circumstance be invalid, provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

Fourth.—If the soldier or mariner shall have written instructions for the preparation

of his Will, but shall have died before it could be prepared and executed, such instructions shall be considered to constitute his Will.

Fifth.—If the soldier or mariner shall in the presence of two witnesses have given verbal instructions for the preparation of his Will, and they shall have been reduced into writing in his lifetime, but he shall have died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

Sixth.—Such soldier or mariner as aforesaid may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

Seventh.—A Will made by word of mouth shall be null at the expiration of one month after the testator shall have ceased to be entitled to make a privileged Will.

58. A Will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment, to any person attesting it, or to his or her wife or husband: but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of such person, or any person claiming under either of them.

59. No person, by reason of interest or of his being an executor of a Will, is disqualified as a witness to prove the execution of the Will, or to prove the validity or invalidity thereof.

60. Every Will shall be revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not in default of such appointment pass to his or her executor, or administrator, or to the person entitled in case of intestacy.

61. No unprivileged Will or Codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another Will or Codicil, or by some writing declaring an intention to revoke the same, and executed in the manner in which an unprivileged Will is herein-before required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Illustrations.

a. A. has made an unprivileged Will; afterwards A. makes another unprivileged Will, which purports to revoke the first. This is a revocation.

b. A. has made an unprivileged Will. Afterwards, A. being entitled to make a privileged Will, makes a privileged Will, which purports to revoke his unprivileged Will. This is a revocation.

62. No obliteration, interlineation, or other alteration made in any unprivileged Will after the execution thereof shall have any effect, except so far as the words or meaning of the Will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as herein-before is required for the execution of the Will; save that the Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the Will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the Will.

63. No unprivileged Will or Codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a Codicil executed in manner herein-before required, and showing an intention to revive the same; and when any Will or Codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

64. A privileged Will or Codicil may be revoked by the testator, by an unprivileged Will or Codicil, or by any act expressing an intention to revoke it, and accompanied with such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Explanation.—In order to the revocation of a privileged Will or Codicil by an act accompanied with such formalities as would be sufficient to give validity to a privileged Will, it is not necessary that the testator should at the time of doing that act be in a situation which entitles him to make a privileged Will.

65. It is not necessary that any technical words or terms of art shall be used in a Will, but only that the wording shall be such that the intentions of the testator can be known therefrom.

66. For the purpose of determining questions as to what person or what property is denoted by any words used in a Will, a court must inquire into every material fact relating to the persons who claim to be interested under such Will, the property which is claimed as the subject of disposition, the circumstances of the testator and of his family, and into every fact a knowledge of which may conduce to the right application of the words which the testator has used.

Illustrations.

(*a.*) A., by his Will, bequeaths 1,000 rupees to his eldest son or to his youngest grandchild, or to his cousin Mary. A Court may make inquiry in order to ascertain to what person the description in the Will applies.

(*b.*) A., by his Will, leaves to B. "his estate called Black Acre." It may be necessary to take evidence, in order to ascertain what is the subject matter of the bequest; that is to say, what estate of the testator's is called Black Acre.

(*c.*) A., by his Will, leaves to B. "the estate which he purchased of C." It may be necessary to take evidence in order to ascertain what estate the testator purchased of C.

67. Where the words used in the Will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect.

A mistake in the name of a legatee may be corrected by a description of him, and a mistake in the description of a legatee may be corrected by the name.

Illustrations.

(*a.*) A. bequeaths a legacy "to Thomas, the second son of his brother John." The testator has an only brother, named John, who has no son named Thomas, but has a second son whose name is William. William shall have the legacy.

(*b.*) The testator bequeaths his property "to A. and B., the legitimate children of C." C. has no legitimate child, but has two illegitimate children, A. and B. The bequest to A. and B. takes effect, although they are illegitimate.

(*c.*) The testator gives his residuary estate to be divided among "his seven children," and proceeding to enumerate them, mentions six names only. This omission shall not prevent the seventh child from taking a share with the others.

(*d.*) The testator having six grand-children, makes a bequest to "his six grand-children," and proceeding to mention them by their Christian names, mentions one twice over, omitting another altogether. The one whose name is not mentioned shall take a share with the others.

(*e.*) The testator bequeaths "1,000 rupees to each of the three children of A." At the date of the Will, A. has four children. Each of these four children shall, if he survives the testator, receive a legacy of 1,000 rupees.

68. Where any word material to the full expression of the meaning has been omitted, it may be supplied by the context.

Illustration.

The testator gives a legacy of "Five hundred" to his daughter A., and a legacy of "Five "hundred rupees" to his daughter B. A. shall take a legacy of Five hundred rupees.

69. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the Will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the bequest shall take effect.

Illustrations.

(*a.*) A. bequeaths to B. "his marsh lands lying in L., and in the occupation of X." The testator had marsh lands lying in L., but had no marsh lands in the occupation of X. The words "in the "occupation of X." shall be rejected as erroneous, and the marsh lands of the testator lying in L. shall pass by the bequest.

(*b.*) The testator bequeaths to A. "his zemindary of Rampore." He had an estate at Rampore, but it was a talook and not a zemindary. The talook passes by this bequest.

70. If the Will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there is any property of his in respect of which all those circumstances exist, the bequest shall be considered as limited to such property, and it shall not be lawful to reject any part of the description as erroneous, because the testator had other property to which such part of the description does not apply.

Explanation.—In judging whether a case falls within the meaning of this section, any words which would be liable to rejection under section 69 are to be considered as struck out of the Will.

Illustrations.

(*a.*) A. bequeaths to B. his marsh lands lying in L., and in the occupation of X. The testator had marsh lands lying in L., some of which were in the occupation of X., and some not in the

occupation of X. The bequest shall be considered as limited to such of the testator's marsh lands lying in L. as were in the occupation of X.

(*b.*) A. bequeaths to B. "his marsh lands lying in L., and in the occupation of X., comprising "1,000 beegas of land." The testator had marsh lands lying in L., some of which were in the occupation of X., and some not in the occupation of X. The measurement is wholly inapplicable to the marsh lands of either class, or to the whole taken together. The measurement shall be considered as struck out of the Will, and such of the testator's marsh lands lying in L., as were in the occupation of X., shall alone pass by the bequest.

71. Where the words of the Will are unambiguous, but it is found by extrinsic evidence that they admit of applications, one only of which can have been intended by the testator, extrinsic evidence may be taken to show which of these applications was intended.

Illustrations.

(*a.*) A man having two cousins of the name of Mary, bequeaths a sum of money to "his cousin "Mary." It appears that there are two persons, each answering the description in the Will. That description, therefore, admits of two applications, only one of which can have been intended by the testator. Evidence is admissible to show which of the two applications was intended.

(*b.*) A., by his Will, leaves to B. "his estate called Black Acre." It turns out that he had two estates called Black Acre. Evidence is admissible to show which estate was intended.

72. Where there is an ambiguity or deficiency on the face of the Will, no extrinsic evidence as to the intentions of the testator shall be admitted.

Illustrations.

(*a.*) A man has an aunt Caroline and a cousin Mary, and has no aunt of the name of Mary. By his Will he bequeaths 1,000 rupees to "his aunt Caroline" and 1,000 rupees to "his cousin Mary," and afterwards bequeaths 2,000 rupees to "his before-mentioned aunt Mary." There is no person to whom the description given in the Will can apply, and evidence is not admissible to show who was meant by "his before-mentioned aunt Mary." The bequest is therefore void for uncertainty under s. 80.

(*b.*) A. bequeaths 1,000 rupees to , leaving a blank for the name of the legatee. Evidence is not admissible to show what name the testator intended to insert.

(*c.*) A. bequeaths to B. rupees or "his estate of ." Evidence is not admissible to show what sum or what estate the testator intended to insert.

73. The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other; and for this purpose a Codicil is to be considered as part of the Will.

Illustrations.

(*a.*) The testator gives to B. a specific fund or property at the death of A., and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A. for life, and after his decease in B.: it appearing from the bequest to B. that the testator meant to use in a restricted sense the words in which he describes what he gives to A.

(*b.*) Where a testator having an estate, one part of which is called Blackacre, bequeaths the whole of his estate to A., and in another part of his Will bequeaths Blackacre to B., the latter bequest is to be read as an exception out of the first, as if he had said, "I give Blackacre to B., and all the "rest of my estate to A."

74. General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

Illustrations.

(*a.*) A testator gives to A. "his farm in the occupation of B.," and to C. "all his marsh lands "in L." Part of the farm in the occupation of B. consists of marsh lands in L., and the testator also has other marsh lands in L. The general words, "all his marsh lands in L." are restricted by the gift to A. A. takes the whole of the farm in the occupation of B., including that portion of the farm which consists of marsh lands in L.

(*b.*) The testator (a sailor on ship-board) bequeathed to his mother his gold ring, buttons, and chest of clothes, and to his friend A. (a shipmate) his red box, arrack, and all things not before bequeathed. The testator's share in a house does not pass to A. under this bequest.

(*c.*) A. by his Will bequeathed to B. all his household furniture, plate, linen, china, books, pictures, and all other goods of whatever kind; and afterwards bequeathed to B. a specified part of his property. Under the first bequest A. is entitled only to such articles of the testator's as are of the same nature with the articles therein enumerated.

75. Where a clause is susceptible of two meanings, according to one of which it has some effect, and according to the other it can have none, the former is to be preferred.

76. No part of a Will is to be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

77. If the same words occur in different parts of the same Will they must be taken to have been used everywhere in the same sense, unless there appears an intention to the contrary.

78. The intention of the testator is not to be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

Illustration.

The testator by a Will made on his death-bed bequeathed all his property to C.D. for life, and after his decease to a certain hospital. The intention of the testator cannot take effect to its full extent, because the gift to the hospital is void under s. 109, but it shall take effect so far as regards the gift to C.D.

79. Where two clauses or gifts in a Will are irreconcileable, so that they cannot possibly stand together, the last shall prevail.

Illustrations.

(*a.*) The testator by the first clause of his Will leaves his estate of Ramnuggur "to A.," and by the last clause of his Will leaves it "to B. and not to A.,"—B. shall have it.

(*b.*) If a man at the commencement of the Will gives his house to A. and at the close of it directs that his house shall be sold and the proceeds invested for the benefit of B., the latter disposition shall prevail.

80. A Will or bequest not expressive of any definite intention is void for uncertainty.

Illustration.

If a testator says, "I bequeath goods to A;" or "I bequeath to A.;" or "I leave to A. all the "goods mentioned in a schedule," and no schedule is found; or "I bequeath 'money,' 'wheat,' "'oil,' or the like," without saying how much, this is void.

81. The description contained in a Will of property the subject of gift, shall be deemed to refer to and comprise the property answering that description at the death of the testator, unless a contrary intention appear by the Will.

82. Unless a contrary intention shall appear by the Will, a bequest of the estate of the testator shall be construed to include any property which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power; and a bequest of property described in a general manner shall be construed to include any property to which such description may extend, which he may have power to appoint by Will to any object he may think proper, and shall operate as an execution of such power.

Explanation.—Where a man is invested with power to determine the disposition of property of which he is not the owner, he is said to have power to appoint such property.

83. Where property is bequeathed to or for the benefit of such of certain objects as a specified person shall appoint, or for the benefit of certain objects in such proportions as a specified person shall appoint; and the Will does not provide for the event of no appointment being made; if the powers given by the Will be not exercised, the property belongs to all the objects of the power in equal shares.

Illustration.

(*a.*) A. by his Will bequeaths a fund to his wife for her life, and directs that at her death it shall be divided among his children in such proportions as she shall appoint. The widow dies without having made any appointment. The fund shall be divided equally among the children.

84. Where a bequest is made to the "heirs," or "right heirs," or "relations," or "nearest relations," or "family," or "kindred," or "nearest of kin," or "next of kin," of a particular person, without any qualifying terms, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person and he had died intestate in respect of it, leaving assets for the payment of his debts independently of such property.

Illustrations.

(*a.*) A. leaves his property "to his own nearest relations." The property goes to those who would be entitled to it if A. had died intestate, leaving assets for the payment of his debts independently of such property.

(*b.*) A. bequeaths 10,000 rupees "to B. for his life, and after the death of B. to his own right heirs." The legacy after B.'s death belongs to those who would be entitled to it if it had formed part of A.'s unbequeathed property.

(*c.*) A. leaves his property to B.; but if B. dies before him, to B.'s next of kin; B. dies before A. the property devolves as if it had belonged to B., and he had died intestate, leaving assets for the payment of his debts independently of such property.

(*d.*) A. leaves 10,000 rupees "to B. for his life, and after his decease, to the heirs of C." The legacy goes as if it had belonged to C., and he had died intestate, leaving assets for the payment of his debts independently of the legacy.

85. Where a bequest is made to the "representatives," or "legal representatives," or "personal representatives," or "executors or administrators" of a particular person, and the class so designated forms the direct and independent object of the bequest, the property bequeathed shall be distributed as if it had belonged to such person, and he had died intestate in respect of it.

Illustration.

(*a.*) A bequest is made to the "legal representatives" of A. A. has died intestate and insolvent. B. is his administrator. B. is entitled to receive the legacy, and shall apply it in the first place to the discharge of such part of A.'s debts as may remain unpaid; if there be any surplus, B. shall pay it to those persons who at A.'s death would have been entitled to receive any property of A.'s which might remain after payment of his debts, or to the representatives of such persons.

86. Where property is bequeathed to any person, he is entitled to the whole interest of the testator therein, unless it appears from the Will that only a restricted interest was intended for him.

87. Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons;—if a contrary intention does not appear by the Will, the legatee first named shall be entitled to the legacy, if he be alive at the time when it takes effect; but if he be then dead the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations.

(*a.*) A bequest is made to A. or to B. A survives the testator. B. takes nothing.

(*b.*) A bequest is made to A. or to B. A. dies after the date of the Will, and before the testator. The legacy goes to B.

(*c.*) A bequest is made to A. or to B. A. is dead at the date of the Will. The legacy goes to B.

(*d.*) Property is bequeathed to A. or his heirs. A. survives the testator. A. takes the property absolutely.

(*e.*) Property is bequeathed to A. or his nearest of kin. A. dies in the lifetime of the testator. Upon the death of the testator the bequest to A.'s nearest of kin takes effect.

(*f.*) Property is bequeathed to A. for life, and after his death to B. or his heirs. A. and B. survive the testator. B. dies in A.'s lifetime. Upon A.'s death the bequest to the heirs of B. takes effect.

(*g.*) Property is bequeathed to A. for life, and after his death to B. or his heirs. B. dies in the testator's lifetime. A. survives the testator. Upon A.'s death the bequest to the heirs of B. takes effect.

88. Where property is bequeathed to a person, and words are added which describe a class of persons, but do not denote them as direct objects of a distinct and independent gift, such person is entitled to the whole interest of the testator therein, unless a contrary intention appears by the Will.

Illustrations.

(*a.*) A bequest is made—

to A. and his children,
to A. and his children by his present wife,
to A. and his heirs,
to A. and the heirs of his body,
to A. and the heirs male of his body,
to A. and the heirs female of his body,
to A. and his issue,
to A. and his family,
to A. and his descendants,
to A. and his representatives,
to A. and his personal representatives,
to A., his executors and administrators.

In each of these cases A. takes the whole interest which the testator had in the property.

(*b.*) A bequest is made to A. and his brothers. A. and his brothers are jointly entitled to the legacy.

(*c.*) A bequest is made to A. for life, and after his death to his issue. At the death of A. the property belongs in equal shares to all persons who shall then answer the description of issue of A.

89. Where a bequest is made to a class of persons under a general description only, no one to whom the words of the description are not in their ordinary sense applicable shall take the legacy.

90. The word "children" in a Will applies only to lineal descendants in the first degree; the word "grandchildren" applies only to lineal descendants in the second degree of the person whose "children," or "grandchildren," are spoken of; the words "nephews" and "nieces" apply only to children of brothers or sisters; the words "cousins" or "first cousins," or "cousins german," apply only to children of brothers or of sisters of the father or mother of the person whose cousins, or first cousins, or cousins german, are spoken of; the words "first cousins once removed" apply only to children of cousins german, or to cousins german of a parent, of the person whose first cousins once removed are spoken of; the words "second cousins" apply only to grandchildren of brothers or of sisters of the father or mother of the person whose "second cousins" are spoken of; the words "issue" and "descendants" apply to all lineal descendants whatever of the person whose "issue" or descendants are spoken of. Words expressive of collateral relationship apply alike to relatives of full and of half blood. All words expressive of relationship apply to a child in the womb who is afterwards born alive.

91. In the absence of any intimation to the contrary in the Will, the term "child," "son," or "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired, at the date of the Will, the reputation of being such relative.

Illustrations.

(*a.*) A. having three children, B., C., and D., of whom B. and C. are legitimate, and D. is illegitimate, leaves his property to be equally divided among "his children." The property belongs to B. and C. in equal shares, to the exclusion of D.

(*b.*) A. having a niece of illegitimate birth who has acquired the reputation of being his niece, and having no legitimate niece, bequeaths a sum of money to his niece. The illegitimate niece is entitled to the legacy.

(*c.*) A. having in his Will enumerated his children, and named as one of them B., who is illegitimate, leaves a legacy to "his said children." B. will take a share in the legacy along with the legitimate children.

(*d.*) A. leaves a legacy to the "children of B.," B. is dead, and has left none but illegitimate children. All those who had, at the date of the Will, acquired the reputation of being the children of B. are objects of the gift.

(*e.*) A. bequeathed a legacy to "the children of B." B. never had any legitimate child. C. and D. had at the date of the Will acquired the reputation of being children of B. After the date of the Will, and before the death of the testator, E. and F. were born, and acquired the reputation of being children of B. Only C. and D. are objects of the bequest.

(*f.*) A. makes a bequest in favour of his child by a certain woman, not his wife. B. had acquired at the date of the Will the reputation of being the child of A. by the woman designated. B. takes the legacy.

(*g.*) A. makes a bequest in favour of his child to be born of a woman, who never becomes his wife. The bequest is void.

(*h.*) A. makes a bequest in favour of the child of which a certain woman, not married to him, is pregnant. The bequest is valid.

92. Where a Will purports to make two bequests to the same person, and a question arises whether the testator intended to make the second bequest instead of or in addition to the first; if there is nothing in the Will to show what he intended, the following rules shall prevail in determining the construction to be put upon the Will:—

First. If the same specific thing is bequeathed twice to the same legatee in the same Will, or in the Will and again in a Codicil, he is entitled to receive that specific thing only.

Second. Where one and the same Will or one and the same Codicil purports to make in two places a bequest to the same person of the same quantity or amount of any thing, he shall be entitled to one such legacy only.

Third. Where two legacies of unequal amount are given to the same person in the same Will, or in the same Codicil, the legatee is entitled to both.

Fourth. Where two legacies, whether equal or unequal in amount, are given to the same legatee, one by a Will and the other by a Codicil, or each by a different Codicil, the legatee is entitled to both legacies.

Explanation.—In the four last rules, the word Will does not include a Codicil.

Illustrations.

(*a.*) A. having ten shares, and no more, in the Bank of Bengal, made his Will, which contains near its commencement, the words "I bequeath my ten shares in the Bank of Bengal to B." After other bequests, the Will concludes with the words "and I bequeath my ten shares in the Bank of "Bengal to B." B. is entitled simply to receive A.'s ten shares in the Bank of Bengal.

(*b.*) A. having one diamond ring, which was given him by B., bequeathed to C. the diamond ring which was given him by B. A. afterwards made a Codicil to his Will, and thereby after

giving other legacies, he bequeathed to C. the diamond ring which was given him by B. C. can claim nothing except the diamond ring which was given to A. by B.

(*c.*) A. by his Will bequeaths to B. the sum of 5,000 rupees, and afterwards in the same Will repeats the bequest in the same words. B. is entitled to one legacy of 5,000 rupees only.

(*d.*) A. by his Will bequeaths to B. the sum of 5,000 rupees, and afterwards, by the same Will, bequeaths to B. the sum of 6,000 rupees. B. is entitled to 11,000 rupees.

(*e.*) A. by his Will bequeaths to B. 5,000 rupees, and by a Codicil to the Will he bequeaths to him 5,000 rupees. B. is entitled to receive 10,000 rupees.

(*f.*) A. by one Codicil to his Will bequeaths to B. 5,000 rupees, and by another Codicil, bequeaths to him 6,000 rupees. B. is entitled to receive 11,000 rupees.

(*g.*) A. by his Will bequeaths "500 rupees to B. because she was his nurse," and in another part of the Will bequeaths 500 rupees to B. "because she went to England with his children." B. is entitled to receive 1,000 rupees.

(*h.*) A. by his Will bequeaths to B. the sum of 5,000 rupees, and also, in another part of the Will, an annuity of 400 rupees. B. is entitled to both legacies.

(*i.*) A. by his Will bequeaths to B. the sum of 5,000 rupees, and also bequeaths to him the sum of 5,000 rupees if he shall attain the age of 18. B. is entitled absolutely to one sum of 5,000 rupees, and takes a contingent interest in another sum of 5,000 rupees.

93. A residuary legatee may be constituted by any words that show an intention on the part of the testator that the person designated shall take the surplus or residue of his property.

Illustrations.

(*a.*) A. makes her Will, consisting of several testamentary papers, in one of which are contained the following words:—"I think there will be something left, after all funeral expenses, &c., to give to "B., now at school, towards equipping him to any profession he may hereafter be appointed to." B. is constituted residuary legatee.

(*b.*) A. makes his Will, with the following passage at the end of it:—"I believe there will be found "sufficient in my banker's hands to defray and discharge my debts, which I hereby desire B. to "do, and keep the residue for her own use and pleasure." B. is constituted the residuary legatee.

(*c.*) A. bequeaths all his property to B., except certain stocks and funds, which he bequeaths to C. B. is the residuary legatee.

94. Under a residuary bequest the legatee is entitled to all property belonging to the testator at the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect.

Illustration.

(*a.*) A. by his Will bequeaths certain legacies, one of which is void under section 109, and another lapses by the death of the legatee. He bequeaths the residue of his property to B. After the date of his Will A. purchases a zemindary, which belongs to him at the time of his death. B. is entitled to the two legacies and the zemindary as part of the residue.

95. If a legacy be given in general terms, without specifying the time when it is to be paid, the legatee has a vested interest in it from the day of the death of the testator, and if he dies without having received it, it shall pass to his representatives.

96. If the legatee does not survive the testator, the legacy cannot take effect, but shall lapse and form part of the residue of the testator's property, unless it appear by the Will that the testator intended that it should go to some other person. In order to entitle the representatives of the legatee to receive the legacy, it must be proved that he survived the testator.

Illustrations.

(*a.*) The testator bequeaths to B. "500 rupees, which B. owes him." B. dies before the testator; the legacy lapses.

(*b.*) A bequest is made to A. and his children. A. dies before the testator. The legacy to A. and his children lapses.

(*c.*) A legacy is given to A., and in case of his dying before the testator to B. A. dies before the testator. The legacy goes to B.

(*d.*) A sum of money is bequeathed to A. for life, and after his death to B. A. dies in the lifetime of the testator, B. survives the testator. The bequest to B. takes effect.

(*e.*) A sum of money is bequeathed to A. on his completing his eighteenth year, and in case he should die before he completes his eighteenth year to B. A. completes his eighteenth year, and dies in the lifetime of the testator. The legacy to A. lapses and the bequest to B. does not take effect.

(*f.*) The testator and the legatee perished in the same shipwreck. There is no evidence to show which died first. The legacy will lapse.

97. If a legacy be given to two persons jointly, and one of them die before the testator, the other legatee takes the whole.

Illustration.

The legacy is simply to A. and B. A. dies before the testator. B. takes the legacy.

98. But where a legacy is given to legatees in words which show that the testator intended to give them distinct shares of it, then if any legatee die before the testator, so much of the legacy as was intended for him shall fall into the residue of the testator's property.

Illustration.

A sum of money is bequeathed to A., B., and C., to be equally divided among them. A. dies before the testator. B. and C. shall only take so much as they would have had if A. had survived the testator.

99. Where the share that lapses is a part of the general residue bequeathed by the Will, that share shall go as undisposed of.

Illustration.

The testator bequeaths the residue of his estate to A., B., and C., to be equally divided between them. A. dies before the testator. His one-third of the residue goes as undisposed of.

100. Where a bequest shall have been made to any child or other lineal descendant of the testator and the legatee shall die in the lifetime of the testator, but any lineal descendant of his shall survive the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention shall appear by the Will.

Illustration.

A. makes his Will, by which he bequeaths a sum of money to his son B. for his own absolute use and benefit. B. dies before A., leaving a son who survives A., and having made his Will whereby he bequeaths all his property to C. The money goes to C.

101. Where a bequest is made to one person for the benefit of another, the legacy does not lapse by the death, in the testator's lifetime, of the person to whom the bequest is made.

102. Where a bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as shall be alive at the testator's death.

Exception.

If property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them as shall be then alive, and to the representatives of any of them who have died since the death of the testator.

Illustrations.

(*a.*) A. bequeaths 1,000 rupees to "the children of B." without saying when it is to be distributed among them. B. had died previous to the date of the Will, leaving three children, C., D., and E. E. died after the date of the Will, but before the death of A. C. and D. survive A. The legacy shall belong to C. and D. to the exclusion of the representatives of E.

(*b.*) A. bequeaths a legacy to the children of B. At the time of the testator's death B. has no children. The bequest is void.

(*c.*) A lease for years of a house was bequeathed to A. for his life, and after his decease to the children of B. At the death of the testator B. had two children living, C. and D.; and he never had any other child. Afterwards, during the lifetime of A., C. died, leaving E. his executor. D. has survived A. D. and E. are jointly entitled to so much of the leasehold term as remains unexpired.

(*d.*) A sum of money was bequeathed to A. for her life, and after her decease to the children of B. At the death of the testator, B. had two children living, C. and D., and after that event, two children, E. and F., were born to B. C. and E. died in the lifetime of A., C. having made a Will, E. having made no Will. A. has died, leaving D. and F. surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C., one to D., one to the administrator of E., and one to F.

(*e.*) A. bequeaths one third of his lands to B. for his life, and after his decease to the sisters of B. At the death of the testator, B. had two sisters living, C. and D., and after that event another sister E. was born. C. died during the life of B.; D. and E. have survived B. One-third of A.'s lands belongs to D., E., and the representatives of C. in equal shares.

(*f.*) A. bequeaths 1,000 rupees to B. for life, and after his death equally among the children of C. Up to the death of B. C. had not had any child. The bequest after the death of B. is void.

(*g.*) A. bequeaths 1,000 rupees to "all the children born or to be born" of B. to be divided among them at the death of C. At the death of the testator, B. has two children living, D. and E. After the death of the testator, but in the lifetime of C., two other children, F. and G., are born to B.

After the death of C. another child is born to B. The legacy belongs to D., E., F., and G. to the exclusion of the after born child of B.

(*h.*) A. bequeaths a fund to the children of B., to be divided among them when the eldest shall attain majority. At the testator's death B. had one child living named C. He afterwards had two other children, named D. and E. E. died, but C. and D. were living when C. attained majority. The fund belongs to C., D., and the representatives of E., to the exclusion of any child who may be born to B. after C.'s attaining majority.

103. Where a bequest is made to a person by a particular description, and there is no person in existence at the testator's death who answers the description, the bequest is void.

Exception.

If property is bequeathed to a person described as standing in a particular degree of kindred to a specified individual, but his possession of it is deferred until a time later than the death of the testator, by reason of a prior bequest, or otherwise; and if a person answering the description is alive at the death of the testator, or comes into existence between that event and such later time, the property shall, at such later time, go to that person, or if he be dead to his representatives.

Illustrations.

(*a.*) A. bequeaths 1,000 rupees to the eldest son of B. At the death of the testator B. has no son. The bequest is void.

(*b.*) A. bequeaths 1,000 rupees to B. for life, and after his death to the eldest son of C. At the death of the testator C. had no son. Afterwards, during the life of B., a son is born to C. Upon B.'s death, the legacy goes to C.'s son.

(*c.*) A. bequeaths 1,000 rupees to B. for life, and after his death to the eldest son of C. At the death of the testator, C. had no son; afterwards, during the life of B., a son named D. is born to C. D. dies, then B. dies. The legacy goes to the representative of D.

(*d.*) A. bequeaths his estate of Greenacre to B. for life, and at his decease to the eldest son of C. Up to the death of B., C. has had no son. The bequest is void.

(*e.*) A. bequeaths 1,000 rupees to the eldest son of C., to be paid to him after the death of B. At the death of the testator C. has no son, but a son is afterwards born to him during the life of B. and is alive at B.'s death. C.'s son is entitled to the 1,000 rupees.

104. Where a bequest is made to a person not in existence at the time of the testator's death, subject to a prior bequest contained in the Will, the later bequest shall be void unless it comprises the whole of the remaining interest of the testator in the thing bequeathed.

Illustrations.

(*a.*) Property is bequeathed to A. for his life, and after his death to his eldest son for life, and after the death of the latter to his eldest son. At the time of the testator's death, A. has no son. Here the bequest to A.'s eldest son is a bequest to a person not in existence at the testator's death. It is not a bequest of the whole interest that remains to the testator. The bequest to A.'s eldest son for his life is void.

(*b.*) A fund is bequeathed to A. for his life, and after his death to his daughters. A. survives the testator. A. has daughters some of whom were not in existence at the testator's death. The bequest to A.'s daughters comprises the whole interest that remains to the testator in the thing bequeathed. The bequest to A.'s daughters is valid.

(*c.*) A fund is bequeathed to A. for his life, and after his death to his daughters, with a direction that if any of them marries under the age of 18 her portion shall be settled so that it may belong to herself for life, and may be divisible among her children after her death. A. has no daughters living at the time of the testator's death, but has daughters born afterwards who survive him. Here the direction for a settlement has the effect in the case of each daughter who marries under 18, of substituting for the absolute bequest to her a bequest to her merely for her life; that is to say, a bequest to a person not in existence at the time of the testator's death of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund is void.

(*d.*) A. bequeaths a sum of money to B. for life, and directs that upon the death of B. the fund shall be settled upon his daughters, so that the portion of each daughter may belong to herself for life, and may be divided among her children after her death. B. has no daughter living at the time of the testator's death. In this case the only bequest to the daughters of B. is contained in the direction to settle the fund, and this direction amounts to a bequest, to persons not yet born, of a life interest in the fund, that is to say, of something which is less than the whole interest that remains to the testator in the thing bequeathed. The direction to settle the fund upon the daughters of B. is void.

105. No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the lifetime of one or more persons living at the testator's decease, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the thing bequeathed is to belong.

Illustrations.

(*a.*) A fund is bequeathed to A. for his life; and after his death to B. for his life; and after B.'s death to such of the sons of B. as shall first attain the age of 25. A. and B. survive the testator. Here the son of B. who shall first attain the age of 25, may be a son born after the death of the testator; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A. and B.; and the vesting of the fund may thus be delayed beyond the lifetime of A. and B., and the minority of the sons of B. The bequest after B.'s death is void.

(*b.*) A fund is bequeathed to A. for his life, and after his death to B. for his life, and after B.'s death to such of B.'s sons as shall first attain the age of 25. B. dies in the life-time of the testator leaving one or more sons. In this case the sons of B. are persons living at the time of the testator's decease, and the time when either of them will attain 25 necessarily falls within his own lifetime. The bequest is valid.

(*c.*) A fund is bequeathed to A. for his life, and after his death to B. for his life; with a direction that after B.'s death it shall be divided amongst such of B.'s children as shall attain the age of 18; but that if no child of B. shall attain that age, the fund shall go to C. Here the time for the division of the fund must arrive at the latest at the expiration of 18 years from the death of B., a person living at the testator's decease. All the bequests are valid.

(*d.*) A fund is bequeathed to trustees for the benefit of the testator's daughters, with a direction that if any of them marry under age, her share of the fund shall be settled so as to devolve after her death upon such of her children as shall attain the age of 18. Any daughter of the testator to whom the direction applies must be in existence at his decease, and any portion of the fund which may eventually be settled as directed must vest not later than 18 years from the death of the daughter whose share it was. All these provisions are valid.

106. If a bequest is made to a class of persons, with regard to some of whom it is inoperative by reason of the rules contained in the two last preceding sections or either of them, such bequest shall be wholly void.

Illustrations.

(*a.*) A fund is bequeathed to A. for life, and after his death to all his children who shall attain the age of 25. A. survives the testator, and has some children living at the testator's death. Each child of A.'s living at the testator's death must attain the age of 25 (if at all) within the limits allowed for a bequest. But A. may have children after the testator's decease, some of whom may not attain the age of 25 until more than 18 years have elapsed after the decease of A. The bequest to A.'s children therefore is inoperative as to any child born after the testator's death; and as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void.

(*b.*) A fund is bequeathed to A. for his life, and after his death to B. C. D., and all other the children of A. who shall attain the age of 25. B. C. D. are children of A. living at the testator's decease. In all other respects the case is the same as that supposed in Illustration (*a*). The mention of B. C. and D. by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void.

107. Where a bequest is void by reason of any of the rules contained in the last three sections, any bequest contained in the same Will and intended to take effect after or upon failure of such prior bequest, is also void.

Illustrations.

(*a.*) A fund is bequeathed to A. for his life, and after his death to such of his sons as shall first attain the age of 25, for his life, and after the decease of such son, to B. A. and B. survive the testator. The bequest to B. is intended to take effect after the bequest to such of the sons of A. as shall first attain the age of 25, which bequest is void under s. 105. The bequest to B. is void.

(*b.*) A fund is bequeathed to A. for his life, and after his death to such of his sons as shall first attain the age of 25, and if no son of A. shall attain that age, to B. A. and B. survive the testator. The bequest to B. is intended to take effect upon failure of the bequest to such of A.'s sons as shall first attain the age of 25, which bequest is void under s. 105. The bequest to B. is void.

108. A direction to accumulate the income arising from any property shall be void; and the property shall be disposed of as if no accumulation had been directed.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the death of the testator, the direction shall be valid in respect only of the income arising from the property within one year next following the testator's death; and at the end of the year such property and income shall be disposed of respectively, as if the period during which the accumulation has been directed to be made had elapsed.

Illustrations.

(*a.*) The Will directs that the sum of 10,000 rupees shall be invested in government securities, and the income accumulated for 20 years, and that the principal together with the accumulations, shall

then be divided between A., B., and C. A., B., and C. are entitled to receive the sum of 10,000 rupees at the end of the year from the testator's death.

(*b.*) The Will directs that 10,000 rupees shall be invested, and the income accumulated until A. shall marry, and shall then be paid to him. A. is entitled to receive 10,000 rupees at the end of a year from the testator's death.

(*c.*) The Will directs that the rents of the farm of Greenacre shall be accumulated for 10 years, and that the accumulation shall be then paid to the eldest son of A. At the death of the testator A. has an eldest son living named B. B. shall receive at the end of one year from the testator's death the rents which have accrued during the year, together with any interest which may have been made by investing them.

(*d.*) The Will directs that the rents of the farm of Greenacre shall be accumulated for 10 years, and that the accumulations shall then be paid to the eldest son of A. At the death of the testator A. has no son. The bequest is void.

(*e.*) A. bequeaths a sum of money to B., to be paid to him when he shall attain the age of 18, and directs the interest to be accumulated till he shall arrive at that age. At A.'s death the legacy becomes vested in B.; and so much of the interest as is not required for his maintenance and education is accumulated, not by reason of the direction contained in the Will, but in consequence of B.'s minority.

109. No man having a nephew or niece or any nearer relative shall have power to bequeath any property to religious or charitable uses, except by a Will executed not less than twelve months before his death, and deposited within six months from its execution in some place provided by law for the safe custody of the Wills of living persons.

Illustrations.

A. having a nephew, makes a bequest by a Will not executed nor deposited as required—
For the relief of poor people;
For the maintenance of sick soldiers;
For the erection or support of a hospital;
For the education and preferment of orphans;
For the support of scholars;
For the erection or support of a school;
For the building and repairs of a bridge;
For the making of roads;
For the erection or support of a church;
For the repairs of a church;
For the benefit of ministers of religion;
For the formation or support of a public garden.
All these bequests are void.

110. Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the Will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy. And in such cases the legacy is from the testator's death said to be vested in interest.

Explanation.—An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is bequeathed to some other person, or whereby the income arising from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that if a particular event shall happen the legacy shall go over to another person.

Illustrations.

(*a.*) A. bequeaths to B. 100 rupees, to be paid to him at the death of C. On A.'s death the legacy becomes vested in interest in B., and if he dies before C., his representatives are entitled to the legacy.

(*b.*) A. bequeaths to B. 100 rupees, to be paid to him upon his attaining the age of 18. On A.'s death the legacy becomes vested in interest in B.

(*c.*) A fund is bequeathed to A. for life, and after his death to B. On the testator's death the legacy to B. becomes vested in interest in B.

(*d.*) A fund is bequeathed to A. until B. attains the age of 18, and then to B. The legacy to B. is vested in interest from the testator's death.

(*e.*) A. bequeaths the whole of his property to B., upon trust to pay certain debts out of the income, and then to make over the fund to C. At A.'s death the gift to C. becomes vested in interest in him.

(*f.*) A fund is bequeathed to A., B., and C., in equal shares, to be paid to them on their attaining the age of 18 respectively, with a proviso that if all of them die under the age of 18 the legacy shall devolve upon D. On the death of the testator, the shares vest in interest in A., B., and C., subject to be divested in case A., B., and C. shall all die under 18, and upon the death of

any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.

111. A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens. A legacy bequeathed in case a specified uncertain event shall not happen does not vest until the happening of that event becomes impossible. In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.

Exception.—Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be applied for his benefit; the bequest of the fund is not contingent.

Illustrations.

(*a.*) A legacy is bequeathed to D. in case A., B., and C. shall all die under the age of 18. D. has a contingent interest in the legacy until A., B., and C. all die under 18, or one of them attains that age.

(*b.*) A sum of money is bequeathed to A. "in case he shall attain the age of 18," or, "when "he shall attain the age of 18." A.'s interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

(*c.*) An estate is bequeathed to A. for life, and after his death to B., if B. shall then be living, but if B. shall not be then living, to C. A., B., and C. survive the testator. B. and C. each take a contingent interest in the estate until the event which is to vest it in one or in the other shall have happened.

(*d.*) An estate is bequeathed as in the case last supposed. B. dies in the lifetime of A. and C. Upon the death of B., C. acquires a vested right to obtain possession of the estate upon A.'s death.

(*e.*) A legacy is bequeathed to A. when she shall attain the age of 18, or shall marry under that age with the consent of B.; with a proviso that if she shall not attain 18, or marry under that age with B.'s consent, the legacy shall go to C. A. and C. each take a contingent interest in the legacy. A. attains the age of 18. A. becomes absolutely entitled to the legacy, although she may have married under 18 without the consent of B.

(*f.*) An estate is bequeathed to A. until he shall marry, and after that event to B. B.'s interest in the bequest is contingent until the condition shall be fulfilled by A.'s marrying.

(*g.*) An estate is bequeathed to A. until he shall take advantage of the Act for the Relief of Insolvent Debtors, and after that event to B. B.'s interest in the bequest is contingent until A. takes advantage of the Act.

(*h.*) An estate is bequeathed to A. if he shall pay 500 rupees to B. A.'s interest in the bequest is contingent until he has paid 500 rupees to B.

(*i.*) A leaves his farm of Greenacre to B., if B. shall convey his own farm of Blackacre to C. B.'s interest in the bequest is contingent until he has conveyed farm Blackacre to C.

(*j.*) A fund is bequeathed to A. if B. shall not marry C. within five years after the testator's death. A.'s interest in the legacy is contingent, until the condition shall be fulfilled by the expiration of the five years without B.'s having married C., or by the occurrence, within that period, of an event which makes the fulfilment of the condition impossible.

(*k.*) A fund is bequeathed to A. if B. shall not make any provision for him by Will. The legacy is contingent until B.'s death.

(*l.*) A. bequeaths to B. 500 rupees a year upon his attaining the age of 18, and directs that the interest or a competent part thereof shall be applied for his benefit until he reaches that age. The legacy is vested.

(*m.*) A. bequeaths to B. 500 rupees when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at that age. The legacy is contingent.

112. Where a bequest is made only to such members of a class as shall have attained a particular age, a person who has not attained that age cannot have a vested interest in the legacy.

Illustration.

A fund is bequeathed to such of the children of A. as shall attain the age of 18, with a direction that while any child of A. shall be under the age of 18 the income of the share, to which it may be presumed he will be eventually entitled, shall be applied for his maintenance and education. No child of A. who is under the age of 18 has a vested interest in the bequest.

113. Where a bequest imposes an obligation on the legatee, he can take nothing by it unless he accepts it fully.

Illustration.

A. having shares in (X.) a prosperous joint stock company, and also shares in (Y.) a joint stock company which is in difficulties, and in respect of which heavy calls are expected to be made, bequeaths to B. all his shares in joint stock companies. B. refuses to accept the shares in (Y.) He forfeits the shares in (X.)

114. Where a Will contains two separate and independent bequests to the same person, the legatee is at liberty to accept one of them and refuse the other, although the former may be beneficial and the latter onerous.

Illustration

A. having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is higher than the house can be let for, bequeaths to B. the lease and a sum of money. B. refuses to accept the lease. He shall not by this refusal forfeit the money.

115. Where a legacy is given if a specified uncertain event shall happen, and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustrations.

(*a*) A legacy is bequeathed to A., and in case of his death, to B. If A. survives the testator, the legacy to B. does not take effect.

(*b*.) A legacy is bequeathed to A., and in case of his death without children, to B. If A. survives the testator or dies in his lifetime leaving a child, the legacy to B. does not take effect.

(*c*.) A legacy is bequeathed to A. when and if he attains the age of 18, and in case of his death to B. A. attains the age of 18. The legacy to B. does not take effect.

(*d*.) A legacy is bequeathed to A. for life, and after his death to B., and, "in case of B.'s death "without children," to C. The words "in case of B.'s death without children," are to be understood as meaning in case B. shall die without children during the lifetime of A."

(*e*.) A legacy is bequeathed to A. for life, and after his death to B., and "in case of B.'s death" to C. The words "in case of B.'s death" are to be considered as meaning "in case B. shall die in the lifetime of A."

116. Where a bequest is made to such of certain persons as shall be surviving at some period, but the exact period is not specified, the legacy shall go to such of them as shall be alive at the time of payment or distribution, unless a contrary intention appear by the Will.

Illustrations.

(*a*.) Property is bequeathed to A. and B., equally to be divided between them, or to the survivor of them. If both A. and B. survive the testator, the legacy is equally divided between them. If A. dies before the testator, and B. survives the testator, it goes to B.

(*b*.) Property is bequeathed to A. for life and after his death to B. and C., equally to be divided between them, or to the survivor of them. B. dies during the life of A.; C. survives A. At A.'s death the legacy goes to C.

(*c*. Property is bequeathed to A. for life, and after his death to B. and C., or the survivor, with a direction that if B. should not survive the testator, his children are to stand in his place. C. dies during the life of the testator; B. survives the testator, but dies in the lifetime of A. The legacy goes to the representative of B.

(*d*. Property is bequeathed to A. for life, and after his death to B. and C., with a direction that in case either of them dies in the lifetime of A., the whole shall go to the survivor. B. dies in the lifetime of A. Afterwards C. dies in the lifetime of A. The legacy goes to the representative of C.

117. A bequest upon an impossible condition is void.

Illustrations.

(*a*.) An estate is bequeathed to A. on condition that he shall walk one hundred miles in an hour. The bequest is void.

(*b*.) A. bequeaths 500 rupees to B. on condition that he shall marry A.'s daughter. A.'s daughter was dead at the date of the will. The bequest is void.

118. A bequest upon a condition, the fulfilment of which would be contrary to law or to morality, is void.

Illustrations.

(*a*. A. bequeaths 500 rupees to B., on condition that he shall kill C. The bequest is void.

(*b*.) A. bequeaths 5,000 rupees to his niece, if she will desert her husband. The bequest is void.

119. Where a Will imposes a condition to be fulfilled before the legatee can take a vested interest in the thing bequeathed, the condition shall be considered to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a*.) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., D., and E. A. marries with the written consent of B. C. is present at the marriage. D. sends a present

to A. previous to the marriage. E. has been personally informed by A. of his intentions and has made no objection. A. has fulfilled the condition.

(*b.*) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. D. dies. A. marries with the consent of B. and C. A. has fulfilled the condition.

(*c.*) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. marries in the lifetime of B., C., and D. with the consent of B. and C. only. A. has not fulfilled the condition.

(*d.*) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. obtains the unconditional assent of B., C., and D. to his marriage with E. Afterwards B., C., and D. capriciously retract their consent. A. marries E. A. has fulfilled the condition.

(*e.*) A legacy is bequeathed to A. on condition that he shall marry with the consent of B., C., and D. A. marries without the consent of B., C., and D., but obtains their consent after the marriage. A. has not fulfilled the condition.

(*f.*) A. makes his Will, whereby he bequeaths a sum of money to B. if B. shall marry with the consent of A.'s executors. B. marries during the lifetime of A., and A. afterwards expresses his approbation of the marriage. A. dies. The bequest to B. takes effect.

(*g.*) A legacy is bequeathed to A. if he executes a certain document within a time specified in the Will. The document is executed by A. within a reasonable time, but not within the time specified in the Will. A. has not performed the condition, and is not entitled to receive the legacy.

120. Where there is a bequest to one person and a bequest of the same thing to another, if the prior bequest shall fail; the second bequest shall take effect upon the failure of the prior bequest, although the failure may not have occurred in the manner contemplated by the testator.

Illustrations.

(*a.*) A. bequeaths a sum of money to his own children surviving him, and if they all die under 18 to B. A. dies without having ever had a child. The bequest to B. takes effect.

(*b.*) A. bequeaths a sum of money to B. on condition that he shall execute a certain document within three months after A.'s death, and if he should neglect to do so, to C. B. dies in the testator's lifetime. The bequest to C. takes effect.

121. Where the Will shows an intention that the second bequest shall take effect only in the event of the first bequest failing in a particular manner, the second bequest shall not take effect unless the prior bequest fails in that particular manner.

Illustration.

A. makes a bequest to his wife, but in case she should die in his lifetime, bequeaths to B. that which he had bequeathed to her. A. and his wife perish together, under circumstances which make it impossible to prove that she died before him. The bequest to B. does not take effect.

122. A bequest may be made to any person with the condition superadded that in case a specified uncertain event shall happen, the thing bequeathed shall go to another person; or that in case a specified uncertain event shall not happen, the thing bequeathed shall go over to another person. In each case the ulterior bequest is subject to the rules contained in Sections 111, 112, 113, 114, 115, 116, 117, 118, 120, 121.

Illustrations.

(*a.*) A sum of money is bequeathed to A., to be paid to him at the age of 18, and if he shall die before he attains that age, to B. A. takes a vested interest in the legacy, subject to be devested to and go to B. in case A. shall die under 18.

(*b.*) An estate is bequeathed to A. with a proviso that if A. shall dispute the competency of the testator to make a Will, the estate shall go to B. A. disputes the competency of the testator to make a Will. The estate goes to B.

(*c.*) A sum of money is bequeathed to A. for life, and after his death to B., but if B. shall then be dead, leaving a son, such son is to stand in the place of B. B. takes a vested interest in the legacy, subject to be devested if he dies leaving a son in A.'s lifetime.

(*d.*) A sum of money is bequeathed to A. and B., and if either should die during the life of C., then to the survivor living at the death of C. A. and B. die before C. The gift over cannot take effect, but the representative of A. takes one-half of the money and the representative of B. takes the other half.

(*e.*) A. bequeaths to B. the interest of a fund for life, and directs the fund to be divided, at her death, equally among her three children, or such of them as shall be living at her death. All the children of B. die in B.'s lifetime. The bequest over cannot take effect, but the interests of the children pass to their representatives.

123. An ulterior bequest of the kind contemplated by the last section cannot take effect, unless the condition is strictly fulfilled.

Illustrations.

(*a.*) A legacy is bequeathed to A., with a proviso that if he marries without the consent of B., C., and D., the legacy shall go to E. D. dies. A. marries. The gift to E. does not take effect.

(*b.*) A legacy is bequeathed to A., with a proviso that if he marries without the consent of B. the legacy shall go to C. A. marries with the consent of B. He afterwards becomes a widower and marries again without the consent of B. The bequest to C. does not take effect.

(*c.*) A legacy is bequeathed to A., to be paid at 18, or marriage, with a proviso that if A. dies under 18, or marries without the consent of B., the legacy shall go to C. A. marries under 18, without the consent of B. The bequest to C. takes effect.

124. If the ulterior bequest be not valid, the original bequest is not affected by it.

Illustrations.

(*a.*) An estate is bequeathed to A. for his life, with a condition superadded that if he shall not on a given day walk 100 miles in an hour, the estate shall go to B. The condition being void, A. retains his estate as if no condition had been inserted in the Will.

(*b.*) An estate is bequeathed to A. for her life, and if she do not desert her husband, to B. A. is entitled to the estate during her life as if no condition had been inserted in the Will.

(*c.*) An estate is bequeathed to A. for life, and, if he marries, to the eldest son of B. for life. B., at the date of the testator's death, had not had a son. The bequest over is void under s. 96, and A. is entitled to the estate during his life.

125. A bequest may be made with the condition superadded that it shall cease to have effect in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(*a.*) An estate is bequeathed to A. for his life, with a proviso that in case he shall cut down a certain wood the bequest shall cease to have any effect. A. cuts down the wood; he loses his life interest in the estate.

(*b.*) An estate is bequeathed to A., provided that if he marries under the age of 25 without the consent of the executors named in the Will, the estate shall cease to belong to him. A. marries under 25 without the consent of the executors. The estate ceases to belong to him.

(*c.*) An estate is bequeathed to A., provided that if he shall not go to England within three years after the testator's death, his interest in the estate shall cease. A. does not go to England within the time prescribed. His interest in the estate ceases.

(*d.*) An estate is bequeathed to A., with a proviso that if she becomes a nun she shall cease to have any interest in the estate. A. becomes a nun. She loses her interest under the Will.

(*e.*) A fund is bequeathed to A. for life and after his death to B., if B. shall be then living, with a proviso that if B. shall become a nun, the bequest to her shall cease to have any effect. B. becomes a nun in the lifetime of A. She thereby loses her contingent interest in the fund.

126. In order that a condition that a bequest shall cease to have effect may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of a bequest, as contemplated by s. 111.

127. Where a bequest is made with a condition superadded that unless the legatee shall perform a certain act the subject matter of the bequest shall go to another person, or the bequest shall cease to have effect; but no time is specified for the performance of the act; if the legatee takes any step which renders impossible or indefinitely postpones the performance of the act required, the legacy shall go as if the legatee had died without performing such act.

Illustrations.

(*a.*) A bequest is made to A. with a proviso that unless he enters the army the legacy shall go over to B. A. takes holy orders, and thereby renders it impossible that he should fulfil the condition. B. is entitled to receive the legacy.

(*b.*) A bequest is made to A. with a proviso that it shall cease to have any effect if he does not marry B.'s daughter. A. marries a stranger, and thereby indefinitely postpones the fulfilment of the condition The bequest ceases to have effect.

128. Where the Will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect; the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as shall be requisite to make up for the delay caused by such fraud.

129. Where a fund is bequeathed absolutely to or for the benefit of any person, but the Will contains a direction that it shall be applied or enjoyed in a particular manner, the legatee shall be entitled to receive the fund as if the Will had contained no such direction.

Illustration.

A sum of money is bequeathed towards purchasing a country residence for A., or to purchase an annuity for A., or to purchase a commission in the army for A., or to place A. in any business. A. chooses to receive the legacy in money. He is entitled to do so.

130. Where a testator absolutely bequeaths a fund, so as to sever it from his own estate, but directs that the mode of enjoyment of it by the legatee shall be restricted, so as to secure a specified benefit for the legatee; if that benefit cannot be obtained for the legatee, the fund belongs to him, as if the Will had contained no such direction.

Illustrations.

(*a.*) A. bequeaths the residue of his property to be divided equally among his daughters, and directs that the shares of the daughters shall be settled upon themselves respectively for life, and be paid to their children after their death. All the daughters die unmarried. The representatives of each daughter are entitled to her share of the residue.

(*b.*) A. directs his trustees to raise a sum of money for his daughter, and he then directs that they should invest the fund, and shall pay the income arising from it to her during her life, and divide the principal among her children after her death. The daughter dies without having ever had a child. Her representatives are entitled to the fund.

131. Where a testator does not absolutely bequeath a fund, so as to sever it from his own estate, but gives it for certain purposes, and part of those purposes cannot be fulfilled, the fund, or so much of it as has not been exhausted upon the objects contemplated by the Will, remains a part of the estate of the testator.

Illustrations.

(*a.*) A. directs that his trustees shall invest a sum of money in a particular way, and shall pay the interest to his son for life, and at his death shall divide the principal among his children; the son dies without having ever had a child. The fund, after the son's death, belongs to the estate of the testator.

(*b.*) A. bequeaths the residue of his estate to be divided equally among his daughters, with a direction that they are to have the interest only during their lives, and that at their decease the fund shall go to their children. The daughters have no children. The fund belongs to the estate of the testator.

132. If a legacy is bequeathed to a person who is named an executor of the Will, he shall not take the legacy unless he proves the Will or otherwise manifests an intention to act as executor.

Illustration.

A legacy is given to A., who is named an executor. A. orders the funeral according to the directions contained in the Will, and dies a few days after the testator, without having proved the Will. A. has manifested an intention to act as executor.

133. Where a testator bequeaths to any person a specified part of his property, which is distinguished from all other parts of his property, the legacy is said to be specific.

Illustrations.

(*a.*) A. bequeaths to B.,

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods, which shall be in or about his dwelling-house in M. Street, in Calcutta, at the time of his death."

"The sum of 1,000 rupees in a certain chest."

"The debt which B. owes him."

"All his bills, bonds, and securities belonging to him, lying in his lodgings in Calcutta."

"All his furniture in his house in Calcutta."

"All his goods on board a certain ship then lying in the River Hooghly."

"2,000 rupees which he has in the hands of C."

"The money due to him on the Bond of D."

"His mortgage on the Rampore Factory."

"One-half of the money owing to him on his mortgage of Rampore Factory."

"1,000 rupees, being part of a debt due to him from C."

"His capital stock of 1,000*l.* in East India stock."

"His promissory notes of the Government of India, for 10,000 rupees in their 4 per cent. "loans."

"All such sums of money as his executors may, after his death, receive in respect of "the debt due to him from the insolvent firm of D. and Company."

"All the horses which he may have in his stable at the time of his death."

"Such of his horses as B. may select."

"All his shares in the Bank of Bengal."

"All the shares in the Bank of Bengal which he may possess at the time of his death."

"All the money which he has in the 5½ per cent. loan of the Government of India."

"All the Government securities he shall be entitled to at the time of his decease."

ch of these legacies is specific.

(*b.*) A. having Government promissory notes for 10,000 rupees, bequeaths to his executors "Government promissory note for 10,000 rupees in trust to sell" for the benefit of B.
The legacy is specific.

(*c.*) A. having property at Benares and also in other places, bequeaths to B. all his property at Benares.
The legacy is specific.

(*d.*) A. bequeaths to B.,
His house in Calcutta.
His zemindary of Rampore.
His talook of Ramnuggur.
His lease of the indigo factory of Sulkea.
An annuity of 500 rupees out of the rents of his zemindary of W.
A. directs his zemindary of X. to be sold, and proceeds to be invested for the benefit of B.
Each of these bequests is specific.

(*e.*) A. by his Will charges his zemindary of Y. with an annuity of 1,000 rupees to C. during his life, and subject to this charge he bequeaths the zemindary to D. Each of these bequests is specific.

(*f.*) A. bequeaths a sum of money,
To buy a house in Calcutta for B.
To buy an estate in Zillah Fureedpore for B.
To buy a diamond ring for B.
To buy a horse for B.
To be invested in shares in the Bank of Bengal for B.
To be invested in Government securities for B.
A. bequeaths to B.
"A diamond ring."
"A horse."
"Ten thousand rupees worth of Government securities."
"An annuity of 500 rupees."
"2,000 rupees, to be paid in cash."
"So much money as will produce 5,000 rupees four per cent. Government securities."
These bequests are not specific.

(*g.*) A. having property in England and property in India, bequeaths a legacy to B., and directs that it shall be paid out of the property which he may leave in India. He also bequeaths a legacy to C., and directs that it shall be paid out of the property which he may leave in England.
No one of these legacies is specific.

134. Where a sum certain is bequeathed, the legacy is not specific merely because the stocks, funds, or securities in which it is invested are described in the Will.

Illustrations.

A. bequeaths to B.
"10,000 rupees of his funded property."
"10,000 rupees of his property now invested in shares of the East India Railway Company."
"10,000 rupees, at present secured by mortgage of Rampore Factory."
No one of these legacies is specific.

135. Where a bequest is made in general terms of a certain amount of any kind of stock, the legacy is not specific merely because the testator was at the date of his Will possessed of stock of the specified kind, to an equal or greater amount than the amount bequeathed.

Illustration.

A. bequeaths to B. 5,000 rupees five per cent. Government securities. A. had at the date of the Will five per cent. Government securities for 5,000 rupees.
The legacy is not specific.

136. A money legacy is not specific merely because the Will directs its payment to be postponed until some part of the property of the testator shall have been reduced to a certain form, or remitted to a certain place.

Illustration.

A. bequeaths to B. 10,000 rupees, and directs that this legacy shall be paid as soon as A.'s property in India shall be realized in England.
The legacy is not specific.

137. Where a Will contains a bequest of the residue of the testator's property along with an enumeration of some items of property not previously bequeathed; the articles enumerated shall not be deemed to be specifically bequeathed.

138. Where property is specifically bequeathed to two or more persons in succession, it shall be retained in the form in which the testator left it, although it may be of such a nature that its value is continually decreasing.

Illustrations.

(*a.*) A. having a lease of a house for a term of years, 15 of which were unexpired at the time of his death, has bequeathed the lease to B. for his life, and after B.'s death to C. B. is to enjoy the property as A. left it, although if B. lives for 15 years C. can take nothing under the bequest.

(*b.*) A. having an annuity during the life of B., bequeaths it to C. for his life, and after C.'s death, to D. C. is to enjoy the annuity as A. left it, although if B. dies before D., D. can take nothing under the bequest.

139. Where property comprised in a bequest to two or more persons in succession, is not specifically bequeathed, it shall in the absence of any direction to the contrary be sold and the proceeds of the sale shall be invested in such securities as the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction may, by any general rule to be made from time to time, authorize or direct, and the fund thus constituted shall be enjoyed by the successive legatees according to the terms of the Will.

Illustration.

A. having a lease for a term of years, bequeaths "all his property" to B. for life, and after B.'s death to C. The lease must be sold and the proceeds invested as stated in the text, and the annual income arising from the fund is to be paid to B. for life. At B.'s death the capital of the fund is to be paid to C.

140. Where a testator bequeaths a certain sum of money, or a certain quantity of any other commodity, and refers to a particular fund or stock so as to constitute the same the primary fund or stock out of which payment is to be made, the legacy is said to be demonstrative.

Explanation.—The distinction between a specific legacy and a demonstrative legacy consists in this, that where specified property is given to the legatee the legacy is specific; where the legacy is directed to be paid out of specified property it is demonstrative.

Illustrations.

(*a.*) A. bequeaths to B. 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. The legacy to B. is specific; the legacy to C. is demonstrative.

(*b.*) A. bequeaths to B. ten bushels of the corn which shall grow in his field of Greenacre."

"80 chests of the indigo which shall be made at his factory of Rampore."

"10,000 rupees out of his five per cent. promissory notes of the Government of India."

An annuity of 500 rupees "from his funded property."

"1,000 rupees out of the sum of 2,000 rupees due to him by C."

A. bequeaths to B. an annuity, and directs it to be paid out of the rents arising from his talook of Ramnuggur.

A. bequeaths to B. "10,000 rupees out of his estate at Ramnuggur," or charges it on his estate at Ramnuggur.

"10,000 rupees, being his share of the capital embarked in a certain business."

Each of these bequests is demonstrative.

141. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator.

Illustration.

A. bequeaths to B. 1,000 rupees, being part of a debt due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. The debt due to A. from W. is only 1,500 rupees; of these 1,500 rupees 1,000 rupees belong to B, and 500 rupees are to be paid to C. C. is also to receive 500 rupees out of the general assets of the testator.

142. If anything which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the legacy is adeemed; that is, it cannot take effect by reason of the subject-matter having been withdrawn from the operation of the Will.

Illustrations.

(*a.*) A. bequeaths to B.,

"The diamond ring presented to him by C."

"His gold chain."

"A certain bale of wool."

"A certain piece of cloth."

"All his household goods which shall be in or about his dwelling-house in M. Street in Calcutta at the time of his death."

A. in his lifetime,
Sells or gives away the ring.
Converts the chain into a cup.
Converts the wool into cloth.
Makes the cloth into a garment.
Takes another house into which he removes all his goods.
Each of these legacies is adeemed.

(*b.*) A. bequeaths to B.,
"The sum of 1,000 rupees in a certain chest."
"All the horses in his stable."
At the death of A. no money is found in the chest and no horses in the stable.
The legacies are adeemed.

(*c.*) A. bequeaths to B. certain bales of goods. A. takes the goods with him on a voyage. The ship and goods are lost at sea, and A. is drowned.
The legacy is adeemed.

143. A demonstrative legacy is not adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind; but it shall in such case be paid out of the general assets of the testator.

144. Where the thing specifically bequeathed is the right to receive something of value from a third party, and the testator himself receives it, the bequest is adeemed.

Illustrations.

(*a.*) A. bequeaths to B.,
"The debt which C. owes him."
"2,000 rupees which he has in the hands of D."
"The money due to him on the bond of E."
"His mortgage on the Rampore factory."
All these debts are extinguished in A.'s lifetime, some with and some without his consent. All the legacies are adeemed.

(*b.*) A. bequeaths to B.,
"His interest in certain policies of life assurance."
A. in his lifetime receives the amount of the policies.
The legacy is adeemed.

145. The receipt by the testator of a part of an entire thing specifically bequeathed shall operate as an ademption of the legacy to the extent of the sum so received.

Illustration.

A. bequeaths to B. "the debt due to him by C." The debt amounts to 10,000 rupees. C. pays to A. 5,000 rupees, the one half of the debt. The legacy is revoked by ademption, so far as regards the 5,000 rupees received by A.

146. If a portion of an entire fund or stock be specifically bequeathed, the receipt by the testator of a portion of the fund or stock shall operate as an ademption only to the extent of the amount so received; and the residue of the fund or stock shall be applicable to the discharge of the specific legacy.

Illustration.

A. bequeaths to B. one half of the sum of 10,000 rupees, due to him from W. A. in his lifetime receives 6,000 rupees, part of the 10,000 rupees. The 4,000 rupees which are due from W. to A. at the time of his death belong to B. under the specific bequest.

147. Where a portion of a fund is specifically bequeathed to one legatee and a legacy charged on the same fund is bequeathed to another legatee; if the testator receives a portion of that fund and the remainder of the fund is insufficient to pay both the specific and the demonstrative legacy; the specific legacy shall be paid first, and the residue (if any) of the fund shall be applied so far as it will extend in payment of the demonstrative legacy, and the rest of the demonstrative legacy shall be paid out of the general assets of the testator.

Illustration.

A. bequeaths to B. 1,000 rupees, part of the debt of 2,000 rupees due to him from W. He also bequeaths to C. 1,000 rupees to be paid out of the debt due to him from W. A. afterwards receives 500 rupees, part of that debt, and dies leaving only 1,500 rupees due to him from W. Of these 1,500 rupees 1,000 rupees belong to B. and 500 rupees are to be paid to C. C. is also to receive 500 rupees out of the general assets of the testator.

148. Where stock which has been specifically bequeathed, does not exist at the testator's death, the legacy is adeemed.

Illustration.

A. bequeaths to B.,
"His capital stock of 1,000*l.* in East India stock:"

"His promissory notes of the Government of India for 10,000 rupees in their 4 per cent. "loan."

A. sells the stock and the notes.

The legacies are adeemed.

149. Where stock which has been specifically bequeathed, does only in part exist at the testator's death, the legacy is adeemed so far as regards that part of the stock which has ceased to exist.

Illustration.

A. bequeaths to B.,

"His 10,000 rupees in the 5½ per cent. loan of the Government of India."

A. sells one half of his 10,000 rupees in the loan in question.

One half of the legacy is adeemed.

150. A specific bequest of goods under a description connecting them with a certain place, is not adeemed by reason that they have been removed from such place from any temporary cause, or by fraud, or without the knowledge or sanction of the testator.

Illustration.

A. bequeaths to B. "all his household goods which shall be in or about his dwelling-house "in Calcutta at the time of his death." The goods are removed from the house to save them from fire. A. dies before they are brought back.

A. bequeaths to B. all his household goods which shall be in or about his dwelling-house in Calcutta at the time of his death. During A.'s absence upon a journey the whole of the goods are removed from the house. A. dies without having sanctioned their removal.

Neither of these legacies is adeemed.

151. The removal of the thing bequeathed from the place in which it is stated in the Will to be situated, does not constitute an ademption, where the place is only referred to in order to complete the description of what the testator meant to bequeath.

Illustrations.

A. bequeaths to B. all the bills, bonds, and other securities for money belonging to him then lying in his lodgings in Calcutta. At the time of his death these effects had been removed from his lodgings in Calcutta.

A. bequeaths to B. all his furniture then in his house in Calcutta. The testator has a house at Calcutta and another at Chinsurah, in which he lives alternately, being possessed of one set of furniture only, which he removes with himself to each house. At the time of his death, the furniture is in the house at Chinsurah.

A. bequeaths to B. all his goods on board a certain ship then lying in the river Hooghly. The goods are removed by A.'s directions to a warehouse, in which they remain at the time of A.'s death.

No one of these legacies is revoked by ademption.

152. Where the thing bequeathed is not the right to receive something of value from a third person, but the money or other commodity which shall be received from the third person by the testator himself or by his representatives, the receipt of such sum of money or other commodity by the testator shall not constitute an ademption; but if he mixes it up with the general mass of his property the legacy is adeemed.

Illustration.

A. bequeaths to B. whatever sum may be received from his claim on C. A. receives the whole of his claim on C. and sets it apart from the general mass of his property. The legacy is not adeemed.

153. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place by operation of law, or in the course of execution of the provisions of any legal instrument under which the thing bequeathed was held, the legacy shall not, by reason of such change, be taken to have been adeemed.

Illustration.

A. bequeaths to B. "all the money which he has in the 5½ per cent. loan of the Government of "India."

The securities for the 5½ per cent. loan are converted during A.'s lifetime into 5 per cent. stock.

A. bequeaths to B. the sum of 2,000*l.*, invested in Consols in the names of trustees for A.

The sum of 2,000*l.* is transferred by the trustees into A.'s own name.

A. bequeaths to B. the sum of 10,000 rupees in promissory notes of the Government of India which he has power, under his marriage settlement, to dispose of by Will. Afterwards, in A.'s life-time, the fund is converted into Consols by virtue of an authority contained in the settlement.

No one of these legacies has been adeemed.

154. Where a thing specifically bequeathed undergoes a change between the date of the Will and the testator's death, and the change takes place without the knowledge or sanction of the testator, the legacy is not adeemed.

Illustration.

A. bequeaths to B. "all his 3 per cent. Consols." The Consols are, without A.'s knowledge, sold by his agent and the proceeds converted into East India stock. This legacy is not adeemed.

155. Where stock which has been specifically bequeathed is lent to a third party on condition that it shall be replaced, and it is replaced accordingly, the legacy is not adeemed.

156. Where stock specifically bequeathed is sold, and an equal quantity of the same stock is afterwards purchased and belongs to the testator at his death, the legacy is not adeemed.

157. Where property specifically bequeathed is subject at the death of the testator to any pledge, lien, or incumbrance, created by the testator himself or by any person under whom he claims; then, unless a contrary intention appears by the will, the legatee, if he acc | the bequest, shall accept it subject to such pledge or incumbrance and shall (as between himself and the testator's estate) be liable to make good the amount of such pledge or incumbrance. A contrary intention shall not be inferred from any direction which the Will may contain for the payment of the testator's debts generally.

Explanation.—A periodical payment in the nature of land revenue or in the nature of rent is not such an incumbrance as is contemplated by this section.

Illustrations.

(a.) A. bequeaths to B. the diamond ring given him by C. At A.'s death the ring is held in pawn by D., to whom it has been pledged by A. It is the duty of A.'s executors, if the state of the testator's assets will allow them, to allow B. to redeem the ring.

(b.) A. bequeaths to B. a zemindary which at A.'s death is subject to a mortgage for 10,000 rupees, and the whole of the principal sum, together with interest to the amount of 1,000 rupees, is due at A.'s death. B., if he accepts the bequest, accepts it subject to this charge, and is liable, as between himself and A.'s estate, to pay the sum of 11,000 rupees thus due.

158. Where anything is to be done to complete the title of the testator to the thing bequeathed, it is to be done at the cost of the testator's estate.

Illustrations.

(a.) A. having contracted in general terms for the purchase of a piece of land at a certain price, bequeaths it to B., and dies before he has paid the purchase-money. The purchase-money must be made good out of A.'s assets.

(b.) A. having contracted for the purchase of a piece of land for a certain sum of money, one-half of which is to be paid down, and the other half secured by mortgage of the land, bequeaths it to B., and dies before he has paid or secured any part of the purchase-money. One-half of the purchase-money must be paid out of A.'s assets.

159. Where there is a bequest of any interest in immoveable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between such estate and the legatee) make good such payments or a proportion of them up to the day of his death.

Illustration.

A. bequeaths to B. a zemindary, in respect of which 365 rupees are payable annually by way of land revenue. A. pays his revenue at the usual time and dies 25 days after. A.'s estate shall make good 25 rupees in respect of the land revenue.

160. In the absence of any direction in the Will, where there is a specific bequest of stock in a joint stock company, if any call or other payment is due from the testator at the time of his death in respect of such stock, such call or payment shall, as between the estate of the testator and the legatee, be borne by the estate of the testator; but if any call or other payment shall after the death of the testator become due in respect of such stock, the same shall, as between the estate of the testator and the legatee, be borne by the legatee if he accept the bequest.

Illustrations.

(a.) A. bequeathed to B. his shares in a certain railway. At A.'s death there was due from him the sum of 5*l.* in respect of each share, being the amount of a call which had been duly made, and the sum of 5*s.* in respect of each share, being the amount of interest which had accrued due in respect of the call. These payments must be borne by A.'s estate.

(*b.*) A. has agreed to take 50 shares in an intended joint stock company, and has contracted to pay up 5*l.* in respect of each share, which sum must be paid before his title to the shares can be completed. A. bequeaths these shares to B. The estate of A. must make good the payments which were necessary to complete A.'s title.

(*c.*) A. bequeaths to B. his shares in a certain railway. B. accepts the legacy. After A.'s death, a call is made in respect of the shares. B. must pay the call.

(*d.*) A. bequeaths to B. his shares in a joint stock company. B. accepts the bequest. Afterwards the affairs of the Company are wound up and each shareholder is called upon for contribution. The amount of the contribution must be borne by the legatee.

(*e.*) A. is the owner of ten shares in a railway company. At a meeting held during his lifetime a call is made of 3*l.* per share, payable by three instalments. A. bequeaths his shares to B., and dies between the day fixed for the payment of the first and the day fixed for the payment of the second instalment, and without having paid the first instalment. A.'s estate must pay the first instalment, and B., if he accepts the legacy, must pay the remaining instalments.

161. If there be a deficiency of assets to pay legacies, a specific legacy is not liable to abate with the general legacies.

162. If there be a bequest of something described in general terms, the executor must purchase for the legatee what will reasonably answer the description.

Illustrations.

(*a.*) A. bequeaths to B. *a* pair of carriage horses, or *a* diamond ring. The executor must provide the legatee with such articles, if the state of the assets will allow it.

(*b.*) A. bequeaths to B. "*his* pair of carriage horses." A. had no carriage horses at the time of his death. The legacy fails.

163. Where the interest or produce of a fund is bequeathed to any person, and the Will affords no indication of an intention that the enjoyment of the bequest should be of limited duration, the principal as well as the interest shall belong to the legatee.

Illustrations.

(*a*). A. bequeaths to B. the interest of his 5 per cent. promissory notes of the Government India. There is no other clause in the Will affecting those securities. B. is entitled to A.'s 5 per cent. promissory notes of the Government of India.

(*b.*) A. bequeaths the interest of his 5½ per cent. promissory notes of the Government of India to B. for his life, and after his death to C. B. is entitled to the interest of the notes during his life, and C. is entitled to the notes upon B.'s death.

(*c.*) A. bequeaths to B. the rents of his lands at X. B. is entitled to the lands.

164. Where an annuity is created by Will, the legatee is entitled to receive it for his life only, unless a contrary intention appears by the Will. And this rule shall not be varied by the circumstance that the annuity is directed to be paid out of the property generally, or that a sum of money is bequeathed to be invested in the purchase of it.

Illustrations.

(*a.*) A. bequeaths to B. 500 rupees a year. B. is entitled during his life to receive the annual sum of 500 rupees.

(*b.*) A bequeaths to B. the sum of 500 rupees monthly. B. is entitled during his life to receive the sum of 500 rupees every month.

(*c.*) A. bequeaths an annuity of 500 rupees to B. for life, and on B's death to C. B. is entitled to an annuity of 500 rupees during his life. C., if he survives B., is entitled to an annuity of 500 rupees from B.'s death until his own death.

165. Where the Will directs that an annuity shall be provided for any person out of the proceeds of property, or out of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, the legacy vests in interest in the legatee on the death of the testator, and he is entitled at his option to have an annuity purchased for him, or to receive the money appropriated for that purpose by the Will.

Illustrations.

(*a.*) A. by his will directs that his executors shall out of his property purchase an annuity of 1,000 rupees for B. B. is entitled at his option to have an annuity of 1,000 rupees for his life purchased for him, or to receive such a sum as will be sufficient for the purchase of such an annuity.

(*b.*) A. bequeaths a fund to B. for his life, and directs that after B's death it shall be laid out in the purchase of an annuity for C. B. and C. survive the testator. C. dies in B.'s lifetime. On B.'s death the fund belongs to the representative of C.

166. Where an annuity is bequeathed but the assets of the testator are not sufficient to pay all the legacies given by the Will, the annuity shall abate in the same proportion as the other pecuniary legacies given by the Will.

167. Where there is a gift of an annuity and a residuary gift, the whole of the annuity is to be satisfied before any part of the residue is paid to the residuary legatee, and, if necessary, the capital of the testator's estate shall be applied for that purpose.

168. Where a debtor bequeaths a legacy to his creditor, and it does not appear from the Will that the legacy is meant as a satisfaction of the debt, the creditor shall be entitled to the legacy as well as to the amount of the debt.

169. Where a parent who is under obligation by contract to provide a portion for a child, fails to do so, and afterwards bequeaths a legacy to the child, and does not intimate by his will that the legacy is meant as a satisfaction of the portion, the child shall be entitled to receive the legacy as well as the portion.

Illustration.

A., by articles entered into in contemplation of his marriage with B., covenanted that he would pay to each of the daughters of the intended marriage a portion of 20,000 rupees on her marriage. This covenant having been broken, A. bequeaths 20,000 rupees to each of the married daughters of himself and B. The legatees are entitled to the benefit of this bequest in addition to their portions.

170. No bequest shall be wholly or partially adeemed by a subsequent provision made by settlement or otherwise for the legatee.

Illustrations.

(*a.*) A. bequeaths 20,000 rupees to his son B. He afterwards gives to B. the sum of 20,000 rupees. The legacy is not thereby adeemed.

(*b.*) A. bequeaths 40,000 rupees to B., his orphan niece whom he had brought up from her infancy. Afterwards, on the occasion of B.'s marriage, A. settles upon her the sum of 30,000 rupees. The legacy is not thereby diminished.

171. Where a man, by his Will, professes to dispose of something which he has no right to dispose of, the person to whom the thing belongs shall elect either to confirm such disposition or to dissent from it, and in the latter case he shall give up any benefits which may have been provided for him by the Will.

172. The interest so relinquished shall devolve as if it had not been disposed of by the Will in favour of the legatee, subject nevertheless to the charge of making good to the disappointed legatee the amount or value of the gift attempted to be given to him by the Will.

173. This rule will apply whether the testator does or does not believe that which he professes to dispose of by his Will to be his own.

Illustrations.

(*a.*) The farm of Whiteacre was the property of C. A. bequeathed it to B., giving a legacy of 1,000 rupees to C. C. has elected to retain his farm of Whiteacre, which is worth 800 rupees. C. forfeits his legacy of 1,000 rupees, of which 800 rupees goes to B., and the remaining 200 rupees falls into the residuary bequest, or devolves according to the rules of intestate succession, as the case may be.

(*b.*) A. bequeaths an estate to B. in case his elder brother (who is married and has children) shall leave no issue living at his death. A. also bequeaths to C. a jewel, which belongs to B. B. must elect to give up the jewel, or to lose the estate.

(*c.*) A. bequeaths to B. 1,000 rupees, and to C. an estate which will under a settlement belong to B. if his elder brother (who is married, and has children) shall leave no issue living at his death. B. must elect to give up the estate, or to lose the legacy.

(*d.*) A., a person of the age of 18 domiciled in India, but owning real property in England, to which C. is heir-at-law, bequeaths a legacy to C., and subject thereto devises and bequeaths to B. "All his property, whatsoever and wheresoever," and dies under 21. The real property in England does not pass by the Will. C. may claim his legacy without giving up the real property in England.

174. A bequest for a man's benefit is, from the purpose of election, the same thing as a bequest made to himself.

Illustration.

The farm of Whiteacre being the property of B., A. bequeathed it to C.; and bequeathed another farm called Blackacre to his own executors, with a direction that it should be sold, and the proceeds applied in payment of B.'s debts. B. must elect whether he will abide by the Will, or keep his farm of Whiteacre in opposition to it.

175. A person taking no benefit directly under the Will, but deriving a benefit under it indirectly, is not put to his election.

Illustration.

The lands of Whiteacre are settled upon C. for life, and after his death upon D., his only child. A. bequeaths the lands of Whiteacre to B., and 1,000 rupees to C. C. dies intestate, shortly

after the testator, and without having made any election. D. takes out administration to C., and as administrator elects on behalf of C.'s estate to take under the Will. In that capacity he receives the legacy of 1,000 rupees, and accounts to B. for the rents of the lands of Whiteacre which accrued after the death of the testator and before the death of C. In his individual character he retains the lands of Whiteacre in opposition to the Will.

176. A person who in his individual capacity takes a benefit under the Will, may in another character elect to take in opposition to the Will.

Illustration.

The estate of Whiteacre is settled upon A. for life, and after his death upon B. A. leaves the estate of Whiteacre to D., and 2,000 rupees to B. and 1,000 rupees to C., who is B.'s only child. B. dies intestate, shortly after the testator, without having made an election. C. takes out administration to B., and as administrator elects to keep the estate of Whiteacre in opposition to the Will, and to relinquish the legacy of 2,000 rupees. C. may do this, and yet claim his legacy of 1,000 rupees under the Will.

Exception to the six last Rules.

Where a particular gift is expressed in the Will to be in lieu of some thing belonging to the legatee, which is also in terms disposed of by the Will, if the legatee claims that thing, he must relinquish the particular gift, but he is not bound to relinquish any other benefit given to him by the Will.

Illustration.

Under A.'s marriage settlement his wife is entitled, if she survives him, to the enjoyment of the estate of Whiteacre during her life.

A. by his will bequeaths to his wife an annuity of 200*l.* during her life, in lieu of her interest in the estate of Whiteacre, which estate he bequeaths to his son. He also gives his wife a legacy of 1,000*l.* The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity, but not the legacy of 1,000*l.*

177. Acceptance of a benefit given by the Will constitutes an election by the legatee to take under the Will, if he has knowledge of his right to elect, and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives inquiry into the circumstances.

Illustrations.

(*a.*) A. is owner of an estate called Whiteacre, and has a life interest in another estate called Blackacre, to which, upon his death, his son B. will be absolutely entitled. The will of A. gives the estate of Whiteacre to B. and the estate of Blackacre to C. B., in ignorance of his own right to the estate of Blackacre, allows C. to take possession of it, and enters into possession of the estate of Whiteacre. B. has not confirmed the bequest of Blackacre to C.

(*b.*) B. the eldest son of A. is the possessor of an estate called Whiteacre. A. bequeaths Whiteacre to C. and to B. the residue of A.'s property. B., having been informed by A.'s executors that the residue will amount to 5,000 rupees allows C. to take possession of Whiteacre. He afterwards discovers that the residue does not amount to more than 500 rupees. B. has not confirmed the bequest of the estate of Whiteacre to C.

178. Such knowledge or waiver of inquiry shall, in the absence of evidence to the contrary, be presumed if the legatee has enjoyed for two years the benefits provided for him by the Will without doing any act to express dissent.

179. Such knowledge or waiver of inquiry may be inferred from any act of the legatee which renders it impossible to place the persons interested in the subject-matter of the bequest, in the same condition as if such act had not been done.

Illustration.

A. bequeaths to B. an estate to which C. is entitled, and to C. a coal mine. C. takes possession of the mine, and exhausts it. He has thereby confirmed the bequest of the estate to B.

180. If the legatee shall not within one year after the death of the testator signify to the testator's representatives his intention to confirm or to dissent from the Will, the representatives shall, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the Will.

181. In case of disability the election shall be postponed until the disability ceases, or until the election shall be made by some competent authority.

182. A man may dispose, by gift made in contemplation of death, of any property which he could dispose of by Will.

A gift is said to be made in contemplation of death where a man who is ill and

expects to die shortly of his illness, delivers to another the possession of any moveable property to keep as a gift in case the donor shall die of that illness.

Such a gift may be resumed by the giver. It does not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made.

Illustrations.

(*a.*) A. being ill, and in expectation of death, delivers to B., to be retained by him in case of A.'s death,—

A watch.
A bond granted by C. to A.
A bank note.
A promissory note of the Government of India endorsed in blank.
A bill of exchange endorsed in blank.
Certain mortgage deeds.

A. dies of the illness during which he delivered these articles.

B. is entitled to—

The watch.
The debt secured by C.'s bond.
The bank note.
The promissory note of the Government of India.
The bill of exchange.
The money secured by the mortgage deed.

(*b.*) A. being ill, and in expectation of death, delivers to B. the key of a trunk, or the key of a warehouse in which goods of bulk belonging to A. are deposited, with the intention of giving him the control over the contents of the trunk, or over the deposited goods, and desires him to keep them in case of A.'s death,—A. dies of the illness during which he delivered these articles. B. is entitled to the trunk and its contents, or to A.'s goods of bulk in the warehouse.

(*c.*) A. being ill and in expectation of death, puts aside certain articles in separate parcels, and marks upon the parcels respectively the names of B. and C., The parcels are not delivered during the life of A. A. dies of the illness during which he set aside the parcels.

B. and C. are not entitled to the contents of the parcels.

183. Probate is the copy of a Will certified under the seal of a court of competent jurisdiction, with a grant of administration to the estate of the testator.

184. An executor is a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

185. An administrator is a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

186. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

187. When a Will has been proved and deposited in a court of competent jurisdiction, situated beyond the limits of the Presidency, whether in the British dominions or in a foreign country, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.

188. Probate can be granted only to an executor appointed by the Will.

189. The appointment may be express, or by necessary implication.

Illustrations.

(*a.*) A. wills that C. be his executor if B. will not; B. is appointed executor by implication.

(*b.*) A. gives a legacy to B. and several legacies to other persons, among the rest to his daughter-in-law, C., and adds, "but should the within-named C. be not living, I do constitute and appoint "B. my whole and sole executrix." C. is appointed executrix by implication.

(*c.*) A. appoints several persons executors of his Will and Codicils, and his nephew residuary legatee, and in another Codicil are these word: "I appoint my nephew my residuary legatee "to discharge all lawful demands against my Will and Codicils, signed of different dates." The nephew is appointed an executor by implication.

190. Probate cannot be granted to any person who is under the age of 18 years, or is of unsound mind, nor to a married woman without the consent of her husband.

191. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A. is an executor of B.'s Will by express appointment, and C. an executor of it by implication. Probate may be granted to A. and C. at the same time, or to A. first and then to C., or to C. first and then to A.

192. If a Codicil be discovered after the grant of probate, a separate probate of that Codicil may be granted to the executor, if it in no way repeals the appointment

of executors made by the Will. If different Executors are appointed by the Codicil, the probate of the Will must be revoked, and a new probate granted of the Will and the Codicil together.

193. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

194. No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction within the Presidency shall have granted probate of the Will under which the right is claimed or shall have granted letters of administration under s. 187.

195. Probate of a Will when granted establishes the Will from the death of the testator, and renders valid all intermediate acts of the executor as such.

196. Letters of administration cannot be granted to any person who is under the age of 18 years, or is of unsound mind, nor to a married woman without the consent of her husband.

197. No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

198. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

199. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

200. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship; except that when one or more of several executors have proved a Will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

201. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate.

202. If the executor renounce, or fail to accept the executorship within the time limited for the acceptance or refusal thereof, the Will may be proved and letters of administration, with a copy of the Will annexed, may be granted to the person who would be entitled to administration in case of intestacy.

203. When the deceased has made a Will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the Will, or when the executor dies after having proved the Will but before he has administered all the estate of the deceased; an universal or a residuary legatee may be admitted to prove the Will, and letters of administration with the Will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

204. When a residuary legatee who has a beneficial interest, survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the Will annexed, as such residuary legatee.

205. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the Will, and letters of administration may be granted to him or them accordingly.

206. Letters of administration with the Will annexed shall not be granted to any legatee other than an universal or a residuary legatee until a citation has been issued and published in the manner herein-after mentioned, calling on the next of kin to accept or refuse letters of administration.

207. When the deceased has died intestate, those who are connected with him either by marriage or by consanguinity, are entitled to obtain letters of administration of his estate and effects in the order and according to the rules herein-after stated.

208. If the deceased has left a widow, administration shall be granted to the widow unless the Court shall see cause to exclude her, either on the ground of some personal disqualification, or because she has no interest in the estate of the deceased.

Illustrations.

(a.) The widow is a lunatic, or has committed adultery, or has been barred by her marriage settlement of all interest in her husband's estate; there is cause for excluding her from the administration.

(b.) The widow has married again since the decease of her husband; this is not good cause for her exclusion.

209. If the judge think proper he may associate any person or persons with the widow in the administration, who would be entitled solely to the administration if there were no widow.

210. If there be no widow, or if the Court see cause to exclude the widow, it shall commit the administration to the person or persons who would be beneficially entitled to the estate according to the rules for the distribution of intestate's estate; provided that when the mother of the deceased shall be one of the class of persons so entitled, she shall be solely entitled to administration.

211 Those who stand in equal degree of kindred to the deceased, are equally entitled to administration.

212. The husband, surviving his wife, has the same right of administration of her estate as the widow has in respect of the estate of her husband.

213. When there is no person connected with the deceased by marriage or consanguinity who is entitled to letters of administration, and willing to act, they may be granted to a creditor.

214. Where the deceased has left property in India letters of administration must be granted according to the foregoing rules, although he may have been a domiciled inhabitant of a country in which the law relating to testate and intestate succession differs from the law of India.

215. When the Will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the Will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

216. When the Will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

217. When the Will is in the possession of a person residing out of the Presidency or other division of territory containing a Court of the last resort in India, in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the Will or an authenticated copy of it be produced.

218. Where no Will of the deceased is forthcoming, but there is reason to believe that there is a Will in existence, letters of administration may be granted, limited until the Will, or an authenticated copy of it, be produced.

219. When any executor is absent from the Presidency, or other such division of territory as aforesaid, in which application is made, and there is no executor within the Presidency or division willing to act, letters of administration with the Will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

220. When any person, to whom, if present, letters of administration with the Will annexed might be granted, is absent from the Presidency, or other such division of territory as aforesaid, letters of administration with the Will annexed may be granted to his attorney, limited as above mentioned.

221. When a person entitled to administration in case of intestacy is absent from the Presidency, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

222. When a minor is sole executor or sole residuary legatee, letters of administration with the Will annexed may be granted to the legal guardian of such minor or to such other person as the Court shall think fit until the minor shall have attained the full age of eighteen years, at which period and not before probate of the Will shall be granted to him.

223. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them shall attain the full age of eighteen years.

224. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, be a lunatic, letters of administration with or without the

Will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or if there be no such person, to such other person as the Court may think fit to appoint, for the use and benefit of the lunatic until he shall become of sound mind.

225. Pending any suit touching the validity of the Will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

226. If an executor be appointed for any limited purpose specified in the Will the probate shall be limited to that purpose, and if he should appoint an attorney to take administration on his behalf, the letters of administration with the Will annexed shall accordingly be limited.

227. If an executor appointed generally give an authority to an attorney to prove a Will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the Will annexed shall be limited accordingly.

228. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

229. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other Court between the parties or any other parties, touching the matters at issue in the said cause or suit, and until a final decree shall be made therein and carried into complete execution.

230. If at the expiration of twelve calendar months from the date of any probate or letters of administration, the executor or administrator to whom the same has been granted is absent from the Presidency, or other such division of territory as aforesaid, within which the Court that has granted the probate or letters of administration is situate, it shall be lawful for such Court to grant, to any person whom it may think fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the administrator, and carrying the decree which may be made therein into effect.

231. In any case in which it may appear necessary for preserving the property of a deceased person, the Zillah judge within whose district any of the property is situate, may grant to any person whom he may think fit, letters of administration limited to the collection and presentation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

232. When a person has died intestate, or leaving a Will of which there is no executor willing and competent to act, or where the executor shall, at the time of the death of such person, be resident out of the Presidency, or other such division of territory as aforesaid, and it shall appear to the Court to be necessary or convenient to appoint some person to administer the estate, or any part thereof, other than the person who under ordinary circumstances would be entitled to a grant of administration, it shall be lawful for the Judge, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate, and probability that it will be properly administered, to appoint such person as he shall think fit to be administrator, and in every such case letters of administration may be limited or not as the Judge shall think fit.

233. Whenever the nature of the case requires that an exception be made, probate of a Will, or letters of administration with the Will annexed, shall be granted, subject to such exception

234. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted, subject to such exception.

235. Whenever a grant, with exception, of probate or letters of administration, with or without the Will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

236. If the executor to whom probate has been granted have died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

237. In granting letters of administration of an estate not fully administered the Court shall be guided by the same rules which apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

238. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

239. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

240. If, after the grant of letters of administration with the Will annexed, a Codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

241. The grant of probate or letters of administration may be revoked or annulled for just cause. *Explanation.* Just cause is, 1st, that the proceedings to obtain the grant were defective in substance; 2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; 3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; 4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a.) The court by which the grant was made had no jurisdiction.

(b.) The grant was made without citing parties who ought to have been cited.

(c.) The Will of which probate was obtained, was forged or revoked.

(d.) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e.) A has taken administration to the estate of B, as if he had died intestate, but a Will has since been discovered.

(f. Since probate was granted, a later Will has been discovered.

(g.) Since probate was granted, a Codicil has been discovered, which revokes or adds to the appointment of executors under the Will.

(h.) The person to whom probate or letters of administration were granted has subsequently become of unsound mind.

242. The zillah judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his zillah, and shall have power to appoint such persons holding judicial situations within his zillah as he shall think fit, to act for him as delegates, to grant probate and letters of administration in noncontentious cases.

243. The zillah judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him for those purposes in relation to any civil suit or proceeding depending in his Court.

244. The zillah judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined respecting the same, and such person shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default, and the costs of the proceeding shall be in the discretion of the judge.

245. If any person shall forge the signature of the zillah judge, or of any person whom he shall think fit to nominate as his delegate, or counterfeit the seal of the court of the zillah judge or his delegate, or knowingly use or tender in evidence any document with a false or counterfeit signature or seal of such judge or delegate, knowing the same signature or seal to be false or counterfeit, every such person shall, upon conviction, be liable to transportation for life or imprisonment either rigorous or simple for a term which may extend to 10 years, and shall also be liable to fine.

246. The practice of the court of the zillah judge in relation to the granting of probate and letters of administration shall, except where otherwise herein-after provided, be, so far as the circumstances of the case will admit, according to the provisions of Act

No. VIII. of 1859, entitled "An Act for simplifying the Procedure of the Courts of "Civil Judicature not established by Royal Charter."

247. Until probate be granted of the Will of a deceased person, or an administrator of his estate be constituted, the zillah judge within whose jurisdiction any part of the property of the deceased person is situate, is authorized and required to interfere for the protection of such property, at the instance of any person claiming to be interested therein, and in all other cases where he considers that the property incurs any risk of loss or damage; and for that purpose, if he shall see fit, to appoint an officer to take and keep possession of the property.

248. Probate of the Will or letters of administration to the estate of a deceased person may be granted by the zillah judge under the seal of his court, if it shall appear by a petition verified as herein-after mentioned of the person applying for the same that the testator or intestate, as the case may be, at the time of his decease, had a fixed place of abode, or any property moveable or immoveable within the jurisdiction of the judge.

249. When the application is made to the judge of a zillah in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the judge to refuse the application if in his judgment it could be disposed of more justly or conveniently in another zillah, or where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction.

250. Probate or letters of administration may, upon application for that purpose, to any judicial officer within the jurisdiction of the zillah judge, whom he may think fit to nominate, as his delegate for granting probates and letters of administration in non-contentious business, be granted by such judicial officer in any case in which there is no contention, if it shall appear, by petition verified as herein-after mentioned, that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode in the district subject to the jurisdiction of such judicial officer.

251. Probate or letters of administration shall have effect over all the property and estate, moveable or immoveable of the deceased, throughout the Presidency in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belonged to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person or persons in whose favour the same has been granted.

252. The application for probate or letters of administration if made and verified in the manner herein-after mentioned shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached, by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the same if obtained by a fraud upon the court.

253. Application for probate shall be made by a petition distinctly written in the language in ordinary use in proceedings before the court in which the application is made, with the Will annexed, and stating the time of the testator's death, that the writing annexed is his last Will and testament, that it was duly executed and that the petitioner is the executor therein named; and in addition to these particulars, when the application is to the zillah judge, the petition shall further state that the deceased at the time of his death had his fixed place of abode, or had some property moveable or immoveable situate within the jurisdiction of the judge; and, when the application is to the district delegate, the petition shall farther state that the deceased at the time of his decease had his fixed abode within the district of the delegate.

254. In cases wherein the Will is written in any other language than that in ordinary use in proceedings before the court, there shall be a translation thereof annexed to the petition by a translator of the court, if the language be one for which a translator is appointed; or if the Will be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—"I (*A.B.*), do declare that I read and perfectly understand the "language and character of the original, and that the above is a true and accurate "translation thereof."

255. Applications for letters of administration shall be made by petition distinctly written as aforesaid, and stating the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims, that the deceased left some property within the jurisdiction of the zillah judge or district delegate to whom the application is made, and the amount of assets which are likely to come to the petitioner's hands; and when the application is to the district delegate, the petition shall further state that deceased at the time of his death had his fixed place of abode within the district.

256. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the ollowing manner or to the like effect:—

"I (*A.B.*), the petitioner in the above petition, do declare that what is stated therein is true to the best of my information and belief."

257. Where the application is for probate, the petition shall also be verified by at least one of the witnesses to the Will (when procurable), in the manner or to the effect following:—

"I (*C.D.*), one of the witnesses to the last Will and testament of the testator mentioned in the above petition, do declare that I was present and did see the said testator affix his signature (*or* mark) thereto (*as the case may be*), (*or* that the said testator acknowledged the writing annexed to the above petition to be his last Will and testament in my presence)."

258. If any petition or declaration which is hereby required to be verified shall contain any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

259. In all cases it shall be lawful to the zillah judge or his district delegate, if he shall think proper, to examine the petitioner in person, and also to require further evidence of the due execution of the Will, or the right of the petitioner to the letters of administration, as the case may be, and to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The citation shall be fixed up in some conspicuous part of the court house, and also in the office of the collector of the zillah, and otherwise published or made known in such manner as the judge or district delegate issuing the same may direct.

260. Caveats against the grant of probate or administration may be lodged with the zillah judge or a district delegate; and immediately on any caveat being lodged with any district delegate he shall send a copy thereof to the zillah judge; and immediately on a caveat being entered with the zillah judge, a copy thereof shall be given to the district delegate, if any, in whose district it is alleged the deceased resided at the time of his death, and to any other judge or district delegate to whom it may appear to the zillah judge expedient to transmit the same.

261. The caveat shall be to the following effect:—"Let nothing be done in the "matter of estate of *A.B.*, late of , deceased, who died on the "day of at , without notice to *C.D.* of ."

262. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the judge or officer to whom the application has been made, or notice thereof has been given of its entry with some other delegate, until after such notice to the person by whom the same has been entered as the court shall think reasonable.

263. The district officer who may be authorized by the judge to act as his delegate in non-contentious business shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

By contention is understood the appearance of any one in person or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

264. In every case where there is no contention, but it appears to a district delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the district delegate may, if he thinks proper, transmit a statement of the matter in question to the zillah judge, who may direct the district delegate to proceed in the matter of the application, according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district delegate in relation to the matters of such application, leaving the party applying for the grant in question to make application to the judge.

265. In every case in which there is contention, or the district delegate is of opinion that the probate or letters of administration should be refused in his court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the zillah judge; unless the district delegate think it necessary for the purposes of justice to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the zillah judge.

266. When it shall appear to the judge or district delegate that probate of a Will should be granted, he will grant the same under the seal of his court in manner following :—

"I, judge of the zillah of (*or* delegate appointed for granting probate and letters of administration in the district of in the zillah of), do by these presents make known unto all men that on the day of in the year the last Will and testament of late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of all and singular the property and credits of the said deceased, and in any way concerning his will, was granted to the executor in the said Will named, he having undertaken well and faithfully to administer the same, and to make a true inventory of all and singular the said property and credits, and to exhibit the same at or before the expiration of a year next ensuing, and also to render a just and true account thereof."

267. And wherever it shall appear to the zillah judge or district delegate that letters of administration to the estate of a person deceased, with or without a copy of the Will annexed, should be granted, he will grant the same under the seal of his Court in manner following :—

"I, , judge of the zillah of , (*or* I, , delegate appointed for granting probates and letters of administration in the district of and zillah of) do by these presents make known unto all men, that on the day of letters of administration (with *or* without the Will annexed, *as the case may be*) of the property and credits of late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken well and faithfully to administer the same, and to make a true inventory of all and singular the said property and credits, and to exhibit the same in this Court at or before the expiration of one year next ensuing, and also to render a just and true account thereof."

268. Every person to whom any grant of administration shall be committed shall give bond to the judge of the zillah court to enure for the benefit of the judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct.

269. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some person, his executors or administrators, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

270. No probate of a Will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of 14 clear days from the day of the testator or intestate's death.

271. Every zillah judge and district delegate shall file and preserve all original Wills of which probate or letters of administration with the Will annexed may be granted by them among the records of their respective courts, until some public registry for Wills is established; subject, in the case of the district delegate, to such regulations as the zillah judge may from time to time make in relation to the due preservation thereof and the convenient inspection of the same.

272. After any grant of probate or letters of administration no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Presidency in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

273. In any case before the zillah judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of the said Act VIII. of 1859, entitled "An Act for simplifying the Procedure of the "Courts of Civil Judicature not established by Royal Charter," in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

274. Where any probate or letters of administration are revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before

the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

275. Every order made by a zillah judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction.

276. The High Court of the Presidency or other Court of the last resort in India having the local jurisdiction, shall have concurrent jurisdiction with the zillah judge in the exercise of all the powers hereby conferred upon the zillah judge, except that of appointing district delegates.

277. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Exceptions.

First.—Intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his funeral or for the immediate necessities of his family or property, does not make an executor of his own wrong.

Second.—Dealing in the ordinary course of business with goods of the deceased received from another, does not make an executor of his own wrong.

Illustrations.

(*a.*) A. uses or gives away or sells some of the goods of the deceased, or takes them to satisfy his own debt or legacy, or receives payment of the debts of the deceased. He is an executor of his own wrong.

(*b.*) A. having been appointed agent by the deceased in his lifetime to collect his debts and sell his goods, continues to do so after he has become aware of his death. He is an executor of his own wrong in respect of acts done after he has become aware of the death of the deceased.

(*c.*) A. sues as executor of the deceased, not being such. He is an executor of his own wrong.

278. When a person has so acted as to become an executor of his own wrong he is answerable to the rightful executor or administrator, or to any creditor or legatee of the deceased, to the extent of the assets which may have come to his hands, after deducting payments made to the rightful executor or administrator, and payments made in a due course of administration.

279. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and to distrain for all rents due to him at the time of his death, as the deceased had when living.

280. All demands whatsoever and all rights to prosecute or defend any action or special proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault and battery, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustrations.

(*a.*) A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having brought any action. The cause of action does not survive.

(*b.*) A. sues for divorce. A. dies. The cause of action does not survive to his representative.

281. An executor or administrator has power to dispose of the property of the deceased, either wholly or in part, in such manner as he may think fit.

Illustrations.

(*a.*) The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it. The sale is valid.

(*b.*) The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased. The mortgage is valid.

282. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any person interested in the property sold.

283. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the Will.

Illustrations.

(*a.*) One of several executors has power to release a debt due to the deceased.
(*b.*) One has power to surrender a lease.
(*c.*) One has power to sell the property of the deceased, moveable or immoveable.
(*d.*) One has power to assent to a legacy.
(*e.*) One has power to endorse a promissory note payable to the deceased.
(*f.*) The Will appoints A., B., C., and D. to be executors, and directs that two of them shall be a *quorum*. No act can be done by a single executor.

284. Upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor.

Powers of Limited Administrator.

285. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

286. An administrator during minority has all the powers of an ordinary administrator.

Powers of a Married Woman Executrix or Administratrix.

287. When probate or letters of administration have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

288. It is the duty of an executor to perform the funeral of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

289. An executor or administrator shall, within six calendar months from the grant of probate or letters of administration, exhibit in the Court by which the same may have been granted an inventory containing a full, true, and perfect estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that may have come to his hands, and the manner in which they have been applied or disposed of.

290. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

291. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, are to be paid before all debts.

292. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

293. Wages due for services rendered to the deceased within twelve months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased.

294. Save as aforesaid, no creditor is to have a right of priority over another, by reason that his debt is secured by an instrument under seal, or on any other account. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

295. If the domicile of the deceased was not in India, the application of his moveable property to the payment of his debts is to be regulated by the law of the country in which he was domiciled.

Illustration.

A. dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 10,000 rupees, immoveable property to the value of 5,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The debts on the instruments under seal are to be paid in full out of the moveable estate, and the proceeds of the immoveable estate are to be applied as far as they will extend towards the discharge of the debts not under seal. Accordingly, one half of the amount of the debts not under seal is to be paid out of the proceeds of the immoveable estate.

296. No creditor who has received payment of a part of his debt by virtue of the last section shall be entitled to share in the proceeds of the immoveable estate of the deceased unless he brings such payment into account for the benefit of the other creditors.

Illustration.

A. dies, having his domicile in a country where instruments under seal have priority over instruments not under seal, leaving moveable property to the value of 5,000 rupees, and immoveable property

to the value of 10,000 rupees, debts on instruments under seal to the amount of 10,000 rupees, and debts on instruments not under seal to the same amount. The creditors holding instruments under seal receive half of their debts out of the proceeds of the moveable estate. The proceeds of the immoveable estate are to be applied in payment of the debts on instruments not under seal until one-half of such debts has been discharged. This will leave 5,000 rupees, which are to be distributed rateably amongst all the creditors without distinction in proportion to the amounts which may remain due to them.

297. Debts of every description must be paid before any legacy.

298. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

299. If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions, and the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

300. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

301. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

302. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A. has bequeathed to B. a diamond ring, valued at 500 rupees, and to C. a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum Rs. 333 5 4 are to be paid to B., and Rs. 666 10 8 to C.

303. For the purpose of abatement, a legacy for life, a sum appropriated by the Will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

304. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a.*) A. by his Will bequeaths to B. his Government paper, which is in deposit with the Agra Bank. The Bank has no authority to deliver the securities, nor B. a right to take possession of them, without the assent of the executor.

(*b.*) A. by his Will has bequeathed to C. his house in Calcutta in the tenancy of B. C. is not entitled to receive the rents without the assent of the executor.

305. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way. This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a.*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b.*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c.*) A bequest is made of a fund to A. and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d.*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e.*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

306. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce and it is not performed, there is no assent.

Illustrations.

(*a.*) A. bequeaths to B. his lands of Greenacre, which at the date of the will, and at the death of A., were subject to a mortgage for 10,000 rupees. The executor assents to the bequest, on condition that B. shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b.*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

307. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

308. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustration.

(*a.*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser; and completes his title to the legacy.

(*b.*) A. bequeaths 1,000 rupees to B. with interest from his death. The executor does not assent to this legacy until the expiration of a year from A.'s death. B. is entitled to interest from the death of A.

309. An executor is not bound to pay any legacy until the expiration of one year from the testator's death.

Illustration.

A. by his Will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

310. Where an annuity is given by the Will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

311. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death; and shall, if the executor think fit, be paid when due, but the executor shall not be bound to pay it till the end of the year.

312. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made; and if the annuitant should die in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

313. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court of the Presidency may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

314. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last section. The intermediate interest shall form part of the residue of the testator's estate.

315. Where an annuity is given and no fund is charged with its payment or appropriated by the Will to answer it, a Government annuity of the specified amount shall be purchased, or if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court of the Presidency or other Court of the last resort in India having the local jurisdiction, may, by any general rule to be made from time to time, authorize or direct.

316. Where a bequest is contingent the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee on his giving sufficient security for the payment of the legacy if it shall become due.

317. Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in such securities as the High Court of the Presidency may for the time being regard as good securities, shall be converted into money and invested in such securities.

318. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

319. Such conversion and investment as are contemplated by the two last preceding sections shall be made at such times and in such manner as the executor shall in his discretion think fit; and until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of four per cent. per annum upon the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

320. Where by the terms of a bequest the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is under age, and there is no direction in the Will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the Zillah Judge, by whom or by whose district delegate the probate or letters of administration with the Will annexed was granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and if the legatee be a ward of the Court of Wards the legacy shall be paid into that Court to his account, and such payment into the Court of the Zillah Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid; and such money when paid in shall be laid out and invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

321. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a.*) A. bequeaths his flock of sheep to B. Between the death of A. and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b.*) A. bequeaths his Government securities to B., but postpones the delivery of them till the death of C. The interest which falls due between the death of A. and the death of C. belongs to B., and must, unless he is a minor, be paid to him as it is received.

(*c.*) The testator bequeaths all his four per cent. Government promissory notes to A. when he shall attain the age of 18. A., if he attain that age is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A.'s attaining 18, forms part of the residue.

322. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a.*) The testator bequeaths the residue of his property to A., a minor, to be paid to him when he shall attain the age of 18. The income from the testator's death belongs to A.

(*b.*) The testator bequeaths the residue of his property to A. when he shall attain the age of 18. A. if he attain that age is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

323. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.

1. Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

2. Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

3. Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

324. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.

Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the Will for maintenance.

325. The rate of interest shall be four per cent. per annum.

326. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

327. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

328. When an executor has paid a legacy under the order of a judge, he is entitled to call upon the legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

329. When an executor has voluntarily paid a legacy he cannot call upon a legatee to refund, in the event of the assets proving insufficient to pay all the legacies.

330. When the time prescribed by the Will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has been allowed, under Section 128, for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

331. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

332. Where an executor or administrator has given such notices as would have been given by the High Court of the Presidency or other court of the last resort in India having the local jurisdiction, in an administration suit for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he shall not have had notice at the time of such distribution; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

333. A creditor who has not received payment of his debt may within two years after the death of the testator or one year after the legacy has been paid call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies; and whether the payment of the legacy by the executor was voluntary or not.

334. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under S. 332, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

335. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

336. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A. has bequeathed 240 rupees to B., 480 rupees to C., and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B., 400 rupees to C., and 600 rupees to D. C. and D. have been paid their legacies in full, leaving nothing to B. B. can oblige C. to refund 80 rupees, and D. to refund 120 rupees.

337. The refunding shall in all cases be without interest.

338. The surplus or residue of the deceased's property after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the Will.

339. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a.*) He pays an unfounded claim.

(*b.*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time.

(*c.*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice.

340. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a.*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor in liable to make good the amount.

(*b.*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount.

We humbly submit this our First Report to Your Majesty's Royal consideration.

JOHN ROMILLY. (L.S.)
W. ERLE. (L.S.)
EDWARD RYAN. (L.S.)
ROBERT LOWE. (L.S.)
J^S. WILLES. (L.S.)
JOHN M. MACLEOD. (L.S.)

Dated this 23rd day of June 1863.

APPENDIX.

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APPENDIX A.

LETTER from the SECRETARY of STATE to the COMMISSIONERS.

India Office,
14th December 1861.

GENTLEMEN,

THE QUEEN having been graciously pleased to appoint you to be Her Majesty's Commissioners, for the purpose of preparing a body of Substantive Civil Law for India, and of considering and reporting on such other matters in relation to the reform of the laws of India, as may be referred to you by me, I have to request that you will at once address yourselves to the preparation of such a body of law on the principles laid down in the Second Report of Her Majesty's Commissioners appointed to consider the reform of the judicial establishment, judicial procedure, and laws of India, a copy of which is herewith transmitted.

In the preparation of such a body of law as that contemplated by the former Commissioners, many important subjects of civil law will come under your consideration. It does not, however, appear to me necessary that you should postpone the submission of all report of your proceedings until the completion of the duty assigned to you by Her Majesty's Commission. Unless there is any objection to such a course, I request that the result of your labours on one branch of civil law may be reported before you enter on the consideration of another branch, as the plan of successive reports on the various departments of law will greatly facilitate the necessary measures which must be taken in India for giving legislative effect to your recommendations.

I have, &c.
CHARLES WOOD.

To Right Honble. Sir John Romilly, Kt.
Right Honble. Sir Wm. Erle, Kt.
Right Honble. Sir Ed. Ryan, Kt.
Right Honble. Robert Lowe.
Sir James S. Willes, Kt.
John Macpherson Macleod, Esq.

SECOND REPORT.—Referred to in the Commission.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners appointed to examine and consider the recommendations of the Indian Law Commissioners who were employed in India, and the enactments proposed by them for the reform of the judicial establishments, judicial procedure, and laws of India, and such other matters in relation to the reform of the said judicial establishments, judicial procedure, and laws as might, by or with the sanction of the Commissioners for the affairs of India, be referred to us; having applied ourselves to the duty thus assigned to us as regards judicial establishments and judicial procedure, in conjunction with the preparation, in pursuance of instructions from the Commissioners for the Affairs of India, of preliminary measures for the amalgamation of the Supreme and Sudder Courts at Calcutta, and having set forth the results in our First Report, have proceeded to examine and consider the state of the laws of India: And though it has not been possible for us to prepare a draft of such particular enactments as we would propose for the reform of those Laws, as we did in respect of the Judicial Establishments and Judicial Procedure, yet having arrived at conclusions as to what is most wanted, and seeing that the work of framing law to supply the want could not be performed before the expiration of the time within which it is required by Statute that every Report of ours shall be made, we think it our duty now to report our views on this highly important subject.

The proposed Penal Code, which was prepared by the Indian Law Commissioners in India when Mr. Macaulay was President of that body, being now under the consideration and revisal of the Legislative Council of India, with a view to its being enacted; we have not collectively made it a particular subject of our examination and consideration, farther than was necessary in order that we might be able to frame in such a manner as to suit it the Code of Criminal Procedure which we submitted in our First Report. But we think it right to state, that we regard those two Codes as the means of remedying the evils of the existing state of things in India with respect to Criminal Law.

It remains for us to treat of the wants of India in respect of substantive Civil Law. The Law Commissioners in India made a very elaborate Report, dated 31st October 1840, to the Governor General in Council bearing on this subject, and containing a full disquisition on the question, whether the law of England ought not, on general principles, to have been held to be the *Lex Loci* of the British possessions in India from the time of their acquisition, as well as a statement of the views of the Commissioners as to the legislation which was required in regard to this matter under the circumstances of the period at which they wrote. From that Report and the various papers connected with it, all of which we have carefully examined and considered, we have obtained much information. We think it unnecessary, however, now to revive the retrospective question discussed by the Commissioners in India. We regard as far more important a conclusion respecting the present state of the laws of India at which they arrived on unquestionable grounds. It is this, that beyond the limits of the capital towns of the three Presidencies, there is not in actual operation any *Lex Loci*, any

substantive Civil Law for the various classes of persons who have not, like the main portions of the population, namely, the Hindoos and Mahomedans, special laws of their own which our judicatures are required to enforce. This is a great want, which ought to be supplied. It is, however, a want which, in our opinion, is merged in another want, larger and not less urgent, and can best be supplied by a measure adapted to meet the whole of the actual emergency.

The Supreme Courts established by Royal Charters administer, within the limits of the capital towns, to Europeans and others not Hindoos or Mahomedans, the substantive Civil Law of England, subject to certain exceptions and qualifications, which we need not particularize. That law, therefore, may correctly be regarded as within those limits an actual *Lex Loci*. From this arises a great difference between the state of the Capitals and that of the Provinces in respect of law. There is a further difference, which affects even the transactions of Hindoos and Mahomedans among themselves, arising from the different terms in which the kinds of cases to be decided by the special laws of the Mahomedans and Hindoos are described by legislative authority, for the guidance of those Supreme Courts and for that of the Courts of Justice in the provinces. The whole difference, consequently, between the state of the law at the Capitals and the state of the law in the Provinces is very great. This is manifestly an evil of no small importance. It cannot but produce much inconvenience even now; and if it were allowed to continue after the proposed union of the Supreme Courts and the Sudder Courts shall have been effected, the inconvenience, we think, would greatly increase. The anomalous state of the law, when one High Court presided over the whole administration of justice, both at the Capital and in the Provinces, would be more striking and more insufferable.

In the present state of the population in India, it is necessary to allow certain great classes of persons to have special laws, recognized and enforced by our Courts of Justice, with respect to certain kinds of transactions among themselves. But we think that it is neither necessary nor expedient that for any persons the law should vary according as they reside within or beyond the boundary of the Capital.

We have given our attentive and anxious consideration to the means of remedying the great defects in the state of the laws in India to which we have now adverted; and we have arrived at the conclusion that what India wants is a body of substantive Civil Law, in preparing which the law of England should be used as a basis; but which, once enacted, should itself be the law of India on the subjects it embraced. The framing of such a body of law, though a very arduous undertaking, would be less laborious than to make a digest of the law of England on those subjects, as it would not be necessary to go through the mass of reported decisions in which much of English law is contained. And such a body of law, prepared as it ought to be with a constant regard to the condition and institutions of India, and the character, religions, and usages of the population, would, we are convinced, be of great benefit to that country.

Being designed to be the law of India on the subjects it embraces, this body of law should govern all classes of persons in India, except in cases excluded from the operation of its rules by express provisions of law. Not only must there, however, be large exceptions in respect of amenability to this body of law, but there are important subjects of Civil Law which we think it would not be advisable that it should embrace. It would be premature to attempt now to define either the exceptions or exclusions.

We see no reason, however, why, on very many important subjects of Civil Law—we shall only name one, contracts, as an example—such law cannot be prepared and enacted as will be no less applicable to the transactions of Hindoos and Mahomedans, by far the most numerous portions of the population, than to the rest of the inhabitants of India.

If on any subject embraced in the new body of law it should be deemed necessary that for a particular class of persons or for a particular district or place there should be law different from the general law, and if there shall be no particular and cogent objection to the insertion of such special law into the proposed body of law, such special law, we think, ought to be provided in that way. But it is our opinion that no portion either of the Mahomedan law or of the Hindoo law ought to be enacted as such in any form by a British Legislature. Such legislation, we think, might tend to obstruct rather than to promote the gradual progress of improvement in the state of the population. It is open to another objection too, which seems to us decisive. The Hindoo Law and the Mahomedan Law derive their authority respectively from the Hindoo and the Mahomedan religion. It follows that, as a British Legislature cannot make Mahomedan or Hindoo religion, so neither can it make Mahomedan or Hindoo law. A Code of Mahomedan law, or a digest of any part of that law, if it were enacted as such by the Legislative Council of India, would not be entitled to be regarded by Mahomedans as very law itself, but merely as an exposition of law, which possibly might be incorrect. We think it clear that it is not advisable to make any enactment which would stand on such a footing.

We have the satisfaction of being able to state that our opinions as to the defects in the state of the substantive Civil Law in India, and the expediency of framing and enacting a body of law for India based upon English law, are very much in accordance with the views of the Law Commissioners in India.

We take this opportunity to report that a Petition from the merchants, traders, and residents of Singapore, for the appointment of a Resident Professional Judge, having been referred to us by the Commissioners for the Affairs of India, we carefully examined and considered that subject, and communicated our opinion thereon to the said Commissioners.

We humbly submit this our Second Report to Your Majesty's Royal consideration.

JOHN ROMILLY. (L.S.)
EDWARD RYAN. (L.S.)
C. H. CAMERON. (L.S.)
JOHN M. MACLEOD. (L.S.)
T. F. ELLIS. (L.S.)

Dated the 13th day of December 1855.

We dissent from the above Report for the reasons stated in our joint Minute.

JOHN JERVIS.
ROBERT LOWE.

APPENDIX B.

PAPERS relating to the CONDITION of INDIA in respect of SUBSTANTIVE LAW.

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INTRODUCTORY NOTE.

THE inhabitants of the British territories in India may be stated generally to consist of Hindoos, Mahomedans, Christians, Parsees, and Jews, and of settlers from China and other parts of Asia.

The Christians may be divided into "British subjects," technically so called (that is to say, persons born in Great Britain and their legitimate descendants, not being aliens); East Indians, who are the descendants of British fathers and native mothers, and who are brought up in the religion and customs of their fathers; Armenians; Native Christians, whether converts or hereditary (of the latter there are many in the south of India); Portuguese (who have commonly resided in India for several generations); Greeks, and other foreigners.

In the presidency towns, the Supreme Courts, constituted by Royal Charter, administer English law to all classes; except that where the suitors are Hindoos or Mahomedans, questions relating to their inheritance and succession to lands, rents, or goods, and all matters of contract and dealing between party and party, are determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Hindoos by the laws and usages of Hindoos, and where only one of the parties is a Mahomedan or a Hindoo, by the laws and usages of the defendant.*

As regards Contracts, the most fruitful source of litigation, the English law is so much in harmony with the Mahomedan and Hindoo laws, that it very rarely happens in the Supreme Courts that any question arises as to the peculiar Mahomedan and Hindoo law on the subject. (*See infra*, p. 76.)

In the Courts which were not established by Royal Charter, and which have hitherto been called the Courts of the East India Company, or the Country or Mofussil Courts, it is only in cases regarding succession, inheritance, marriage, caste, and all religious usages and institutions, that the Mahomedan law with regard to Mahomedans, and the Hindoo law with regard to Hindoos, are considered as affording the general rule by which judges form their decisions.

Where the suitors are Hindoos or Mahomedans, but the case does not fall within the exception just stated,—and in cases of every kind where the suitors are not Hindoos or Mahomedans,—it may be [redacted] that, with certain exceptions in favour of local [redacted] it is the law of all the Country Courts throughout India, that where no specific rule may exist, the judges are to decide according to justice, equity, and good conscience (p. 6).

There are some subjects on which specific rules do exist, such as mortgage of land, and the relations of the holders of land to the Government or the immediate superior to whom they make payment. But in the great majority of the cases which come before the Courts no specific rule exists.

A practice has grown up in the Country Courts of administering to every person, not being a Hindoo or a Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience (pp. 61, 72).

It is chiefly in matters relating to Inheritance and Succession and to Personal Relations, that the Country Courts endeavour to discover and apply the substantive law of the country of the suitor. It can hardly be said that they have made any such endeavour in the cases relating to Contract, although it is the opinion of some that they have been insensibly influenced by the notions of legal right which are current among the Natives, and which have been chiefly derived from the Mahomedan law. Of late years the judges have shown a tendency to resort to English books for legal principles to guide them.

As regards those matters in which the Country Courts have endeavoured to apply the substantive law of the country of origin, much inconvenience has arisen. There is a great and increasing number of aliens whose law it is difficult to discover; and the Courts may have to determine intricate questions of pedigree before they can decide what law they are to administer. The Armenians may be said to have no law of their own. There is a great and increasing number of persons whose legal connexion with their country or with the country of their ancestors is interrupted by illegitimacy, and it is doubtful whether the practice is applicable to such persons (*infra*, pp. 62, 72). The case of Native Christians is yet more embarrassing.

The East Indians about thirty years ago presented a petition to Parliament, complaining of the want of a system of law applicable to their body; and in December 1836 their petition, together with one to the like effect from the Armenians, was referred by the Indian Government to the Law Commission then sitting at Calcutta.

On the 31st October 1840 the Commissioners presented their report (*infra*, p. 60) upon the substantive law to which they thought that all persons in the Mofussil (that is to say, all persons not resident within the local limits of any of the three presidency towns,) not subject to Hindoo or Mahomedan civil law, should be subject. The report examines fully the existing state of the law, and makes several recommendations (p. 63), of which the most important for the present purpose are, that an Act should be passed declaring and enacting that so much of the law of England as is applicable to the situation of the people, and as is not inconsistent with local Regulations, should be taken to be the law of the land, except in the places subject to the jurisdiction of Her Majesty's Courts; and that all persons should be subject to that law, except Hindoos and Mahomedans; that the English tenures of land, and the system of conveyancing which [redacted] upon them, should be excluded; and that [redacted] interest which any person, not being a Hindoo [redacted] Mahomedan, might have in real property situate [redacted] the limits of the local jurisdiction of Her [redacted] Majesty's Courts, should go to the executors or administrators of such person, and be distributable according to the Statute of Distributions, in like manner as personal property. Mr. Amos, the President of the Commission, and a Member of the Council of

* See Stat. 21 George 3, chap. 70. s. 17., and the Madras and Bombay Charters, printed in Morley's Digest, pp. 603, 653.

India, recorded a Minute in which he discusses several of the subjects mentioned in the Report, and intimates that he is not prepared to recommend on that occasion the proposed departure from the law of England in respect of the succession to real property, although the subject is one upon which in Council he would be anxious to invite discussion (p. 64).

The disabilities and difficulties under which the Native Christians laboured, still greater and more complicated than those of the classes just mentioned, were likewise at various times brought to the notice of the Government; and a very full and elaborate petition on the subject, from certain missionaries (p. 65), was referred by the Government to the Law Commission, which had already been instructed to submit the draft of an Act, upon the principle of the first four recommendations of their Report (p. 69).

On the 22d May 1841 the Law Commissioners submitted (p. 69) to the Government the draft of an Act which they thought would afford a remedy for the grievances complained of by the missionaries, so far at least as such an object could be properly connected with the other purposes of the Act.

The Act, which is commonly known as the *Lex loci* Act, will be found at p. 72, *infra*.

Its leading provisions (so far as concerns the present purpose) are, that the substantive law of the territories without the local jurisdiction of the Supreme Court should be so much of the substantive law of England as is applicable to the people of those territories, and not inconsistent with local regulations; and that immoveable property situated in those territories should be regulated by the rules which regulate personal property according to the substantive law of England.

Mr. Prinsep, a member of the Council of India, recorded (p. 69) a Minute expressing his dissent from the principles on which the propositions of the Law Commission in regard to the *Lex loci* of India were based; Mr. Amos likewise recorded a Minute on the subject (p. 70); and Sir Lawrence Peel and Sir Henry Seton, Judges of the Supreme Court at Calcutta, pointed out very forcibly that the system of English law is so vast, and the application of it is attended with so many difficulties to judges not previously trained to its study, that the difficulties of administering it in India without further explanation than that which was afforded by the Draft Act would be almost insurmountable; they remarked that it would be of the greatest aid to those who would have to apply its provisions if the Draft Act were accompanied by some digest or authoritative exposition of the law to be introduced; and they offered their aid in framing provisions in accordance with their views, as to the specification and explanation of the law to be introduced (p. 75). Sir Lawrence Peel explained in a subsequent letter that it was in his opinion essential to the success of the experiment that a digest should form part of it, and that the recommendation of the measure by Sir Henry Seton and himself proceeded on this view (p. 76).

Some of the disabilities affecting Native Christians have been removed by Act XXI. of 1850 of the Indian Legislature, which enacts that so much of any law or usage now in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of right or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing or having been excluded from the communion of any religion or been deprived of caste, shall cease to be enforced as law in the Courts of the East India Company and in the Courts established by Royal Charter within the said territories. Certain disabilities affecting Native Christians in common with [redacted] have been removed by an Act of the Imperial Legislature, 14 & 15 Vict. c. 40., known as the Indian Marriage Act.

It will appear by the accompanying papers that the task imposed upon the present Commission is the preparation of a body of civil law which shall meet all the legal wants of the Hindoos and Mahomedans, except in matters connected with "succession, inheritance, marriage, and caste, and all religious usages and institutions," and which shall meet all the legal wants (with but few and partial exceptions) of the multifarious inhabitants of India who are not Hindoos or Mahomedans. It will also be seen, upon a perusal of the papers, that the subjects of Succession and Inheritance are those upon which the absence of a fixed and uniform law has been chiefly felt.

EXTRACTS from REPORT of the LAW COMMISSIONERS in INDIA upon the LEX LOCI; dated October 31st, 1840.

ON THE PETITIONS OF THE EAST INDIANS AND ARMENIANS.

To the Right Honourable the Earl of Auckland, G.C.B., Governor-General of India in Council.

WE have now the honour to report upon the substantive law to which we think all persons in the mofussil not subject to Hindoo or Mahomedan civil law should be subject.

On the 15th November 1836 the government of Bengal sent to the Supreme Government, to be forwarded to the Law Commission, an extract from a despatch of the Honourable Court of Directors, and other papers, connected with certain complaints of the East Indians, and their petition to Parliament. Mr. Secretary Mangles, in his letter of the 17th December 1836, forwarded the same to the Law Commission, to be considered in their proper place.

Of the many subjects to which these papers relate, there are three which, as belonging to jurisprudence, and as being very important, appear to be peculiarly deserving of our consideration:

1. The uncertain condition of the petitioners, as regards civil law.
2. Their subjection to Mahomedan criminal law.
3. The subjection to criminal courts constituted according to Mahomedan principles, or at any rate not constituted according to principles acceptable to Christians of British descent.

The second of these questions we consider to be disposed of, so far as regards the Law Commission, by the proposed penal code; and upon the third we propose to report separately. The present report will therefore treat only of the first.

* * * * *

In considering what ought to be done towards satisfying the claims thus put forward by the East Indians, it appeared to us that our first duty was to consider carefully what now is, or ought to be, according to recognized principles, the legal condition of these petitioners; and as no special legislative provision has been made for them, the answer to this question must necessarily be an answer to the more general and surely very important question, what is the law to which all persons in British India for whom no special provision has been made, or who are not excepted on account of special circumstances, are subject? or, in other words, what is the *lex loci* of British India?

* * * * *

It is to be observed, that the Company's courts are, in respect of all persons not Hindoos and Mahomedans, not courts of law, but mere courts of conscience.

The only laws which those courts are empowered to administer are the Mahomedan law to Mahomedans, and the Hindoo law to Hindoos, in suits regarding [redacted]ccession, inheritance, marriage, and caste, and all [redacted]gious usages and institutions. Regulation IV. of [redacted], Section 15.

In cases for which no specific rule may exist, the judges are directed to act according to justice, equity, and good conscience. Regulation III. of 1793, Section 21. This Regulation applied only to Bengal, Behar, and Orissa, but it has been since extended to

the other provinces of this presidency, and has been adopted in the Madras Regulations.

By Section 9, Regulation VII. of 1832, it is provided, that whenever "in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion ; or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience ; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The provisions relating to this subject in the Bombay code are to be found in Regulation IV. of 1827, Section 26 : "The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case ; in the absence of such Acts and Regulations, the usage of the country in which the suit arose ; if none such appears, the law of the defendant ; and in the absence of specific law and usage, justice, equity, and good conscience alone."

Section 27, Clause 1 : "When in any matter depending on the peculiarities of Hindoo or Mahomedan law, a doubt arises regarding such law, the court, in aid of its judgment, shall consult the officer or officers appointed to expound those laws respectively, in the manner prescribed by Regulation II. of 1827, Section 13, Clause 3."

Clause 2 : "When in any matter depending on the peculiarities of any other law, or of a rule or usage of a sect or caste, a doubt arises regarding such law, rule, or usage, the court shall ascertain the same, by examining persons versed in such law, or the heads of such sect or caste, or other well-informed persons."

Political considerations similar to those which prevented this government from coining money with the head of the British King, but which have now ceased to operate, have no doubt also prevented the legislature from saying what is the *lex loci* of this country, and it has seemed the less necessary to do so, as the Supreme Courts hold themselves bound by their charters to administer English law, when there is no express provision to the contrary, and as the mofussil courts are all courts of conscience.

But although the mofussil courts are courts of conscience, their position in respect of law is not analogous to that of the courts which in England now bear that name ; those are courts for the recovery of small debts, and nothing more, and such courts can very well decide the cases within their competence with little or no reference to any law ; but the courts in the mofussil have to decide upon all kinds of rights, not only those which are the same in all countries, but those which, depending upon mere positive institution, are different in different countries. A man who borrows money, and refuses to pay it, acts unconscientiously, whether he does so in England or in France. But a man who withholds from his younger brothers a share of his deceased father's land, acts conscientiously in England and unconscientiously in France. In these cases, as one of our old law books expresses it, "the diversity of law maketh the diversity of conscience." Before, therefore, a court of conscience can decide a question of this latter sort, it must know under what law the parties are living.

The position of the mofussil courts, therefore, in regard to law, is much more analogous to that of those courts of conscience in England which have now got the distinctive appellation of courts of equity. The mofussil courts, in order to decide rightly, must and do adopt that maxim on which the English courts of equity act ; viz., that equity follows the law. Surely, therefore, it is of importance that a judge in the mofussil should know what law it is that his equity is to follow.

It is quite true that, if English law is the *lex loci*, the mofussil courts, from unavoidable defect of technical knowledge, must find considerable difficulty in shaping their equity according to that law. But it is equally true that, if there is no *lex loci*, their difficulties, though not exactly of the same kind, must be, in some respects, much greater ; for upon that supposition their equity may have, upon occasion, to follow every law in the world ; and very frequently, before they can decide what law their equity is to follow in any particular case, they must decide difficult questions of mixed fact and law. Questions of pedigree, which are those that will arise upon such occasions, take up more time in the investigation, and give less satisfaction in the decision, than perhaps any others.

In addition to these most difficult questions of mixed fact and law, the mofussil courts must have also to decide frequently questions upon the conflict of laws, well known to be among the most puzzling which exercise the skill of jurists.

No courts can indeed altogether avoid these questions, but they must necessarily spring up in the greatest abundance in a country where there is no *lex loci*.

Again, by far the greater number of cases in which equity in this country must follow some law, are likely to be cases in which it must follow English law, because Englishmen and their descendants are likely to be much more numerous in India than any other persons not Hindoos or Mahomedans.

Now, if English law is not the *lex loci*, it must be considered in the condition of any other foreign law, and the mofussil judge would not, according to established principles, be justified in deciding upon his own knowledge of it, but ought to require in each case that the party alleging the English law should prove by documentary evidence or by testimony that the law is what he alleges it to be. This course might relieve the judge from some responsibility, but it would surely be very prejudicial to the interest of the suitors.

The mofussil courts have had to decide some cases, though hitherto probably very few, in which they have felt that the equity they are to administer must follow some law.

The doctrine they have adopted is, that there is no *lex loci* in British India, and their practice has been to ascertain in the best manner they could what was the law of the country of the parties before them.

By this doctrine and practice the remarkable state of things mentioned by Agobardus is reproduced. In this country it would be easy to assemble many more than five persons of whom no two follow the same law. But besides this necessary consequence, the doctrine and practice in question gave rise in the peculiar circumstances of British India, to many other strange difficulties and anomalies.

First, there is the singular consequence alluded to above, that the measure of bringing Frenchmen under the jurisdiction of the Supreme Court would have deprived them of French law, or at least of equity following French law ; a change which the French nation could hardly have looked upon as a boon, and for which the French King could hardly have intended to stipulate.

Another very singular consequence is produced by the limitation which this doctrine and practice receive from the principle that all British subjects (technically so called) are to have English law administered to them. We mean the consequence, that the Scots alone of all the nations upon earth are not entitled to have any regard paid to the laws of their country in the adjudication of their suits by the mofussil courts. This, however, though monstrous in theory, is no practical grievance ; the anomaly is not that the Scots in India are brought under English

law, but that people of other nations in India are not brought under it.

* * * * *

But the case of all persons who are cut off, by the illegitimacy of themselves or their ancestors, from all legal connexion with the country from which they sprung, is left unprovided for by this doctrine of personal laws. All such persons (and these petitioners are such), whose native and only country is British India, have certainly a right to ask, not in vain, of the legislature, that if there is a *lex loci* it should be declared, and that if there is not, one should be enacted.

The case of the Armenians, too, is left unprovided for by this doctrine. They are not indeed cut off by illegitimacy from the country of their natural origin. But, as the Armenians of this presidency stated in a petition to the Governor-General in Council on the 10th September 1836, their race "has long ceased to be anywhere a nation." If they ever had any law derived from Armenia, it must apparently have been the Roman law, for their ancient law appears to have been abrogated by Justinian.

The title of the 21st Novel is, "De Armeniis ut et illi per omnia Romanorum leges sequantur."

The special object of this Novel was to substitute the Roman law of succession for the Armenian, which excluded females. But it seems clear from the emperor's expressions that it was only the last step of a series of changes by which the Armenian nation had been brought under the Roman law; or perhaps a change which, on account of its peculiar importance or the peculiar reluctance of the people to adopt it, was thought to require special provision; while general words were considered sufficient to effect the desired substitution in other respects.

This law was enacted in the year 536, and, excepting an edict of the preceding year, it is all we have been able to find respecting the legal history of Armenia. This edict is to the same effect as the Novel above mentioned, and shows by its preamble that the barbarous and uncommon law (barbaricam et insolentem legem), as the emperor calls the Armenian law of succession, had only lately been brought to his notice.

But whatever law the Armenians had at the time when they ceased to be a nation, it appears to have fallen into desuetude, and even into oblivion. In the petition above mentioned they say, amongst other things, "In the courts of the Company no settled rule of law whatever has prevailed in respect to the inheritance and succession to property of deceased Armenians. While some of the Company's judges follow the course of the King's court, and adopt the rules of English law, others hold themselves bound to act upon their individual notions of equity pursuant to the terms of Regulation VII. of 1832, Sec. 9, and others bewilder themselves in the vain endeavour to discover the law of Armenia, of which there is no trace extant, and refer to Armenian ecclesiastics, whose legal knowledge, when they have any, is limited to the bare rudiments of the canon law."

The Parsees, also, are nearly in the same condition, except that in losing the memory of the laws to which they were subject when they fled from their native country, they appear in some places to have borrowed customs from the Hindoos.

When these cases are considered, it will be seen that, though British India may appear, on the one hand, to have less need of a *lex loci* than any other country, because the great mass of its population consists of two sects whose law is contained in their religion, yet, on the other hand, there is probably no country in the world which contains so many people who, if there is no law of the place, have no law whatever.

Indeed, whether we look at reasons drawn from jurisprudence, or at reasons drawn from convenience and utility, there is no doctrine more certain than this; that in every country there ought to be a law which is, *primâ facie*, applicable to every person in it. The number of classes which, in any particular country, should be exempted from this law, must always depend upon the circumstances of that country; but, be these classes few or many, small or large, the necessity of a law for persons whose condition cannot be defined beforehand, or who cannot be brought by evidence within any of the defined classes, remains undeniable.

We find four cases in the Report of Cases in the Sudder Dewanny Adawlut of Calcutta, and one in those of the Sudder Dewanny Adawlut of Bombay, which will exemplify that doctrine and practice of the mofussil courts of which we have been speaking.

We shall arrange these cases, not in the order in which they occurred, but in that most convenient for our present purpose.

We must observe, that we have not found any case deciding upon the rights of that class to which the petitioners belong.

There are three other classes of persons in this country whose legal condition seems to us to require definition by legislative provisions.

1. All foreigners, not being Hindoos or Mahomedans.

2. Subjects of Her Majesty, not being British subjects in the narrow and technical sense of the term, and not being Hindoos or Mahomedans, among whom the Portuguese are remarkable from their numbers, the Armenians from their numbers and wealth.

3. British subjects in the narrow and technical sense of the term.

* * * * *

There is nothing, then, in the English substantive law which prevents it from being easily adapted to the condition of all persons in India not Hindoos or Mahomedans.

We know that it will be considered a great boon by the large and increasing class whose petition has given rise to this Report.

We learn as much respecting the Armenians from their petition, which we have already noticed; for, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered, your petitioners humbly submit that the law of England is the only one that can, upon any sound principles, be permitted to prevail, and that it is moreover the law which was promised to Armenians at the time of their settlement in the country."

At the end of their petition they give a copy of an agreement between the East India Company and Cogee Phanoos Calender, an eminent Armenian merchant. This agreement is dated 22nd of June 1688, and contains what they here construe as a promise of English law. It is of course unnecessary that we should discuss either the validity or the meaning of the agreement, as it is the wishes only, and not the rights of the Armenian people, with which we are here concerned.

We have no reason to think that English law, thus adapted to the condition of British India, will be considered objectionable by the Portuguese.*

We believe that in introducing it as the *lex loci* of this country, the Legislature will be doing no more than giving an express sanction to that which ought to have taken place tacitly, according to the analogy of the general principles of international jurisprudence.

Lastly, we are satisfied that it is very much for the interest of the subjects of this Indian empire, that during the considerable interval which must elapse before codes of substantive law can be prepared,

* With regard to the Parsees, there may be some doubt; that large portion of this race which is to be found in Goojrat and on the coast north of Bombay might possibly feel some discontent at being included in the proposed Act. They are purely Asiatic people, and whatever they have of positive law, to which they are entitled under the Bombay Code, consists of such of their national customs as can still be ascertained, and such as they have borrowed from the Hindoos. It will be seen that we propose to give them, as to all others who are interested, an opportunity of expressing their opinions upon the measure which we are recommending.

[Note, 1862.—An attempt has lately been made to ascertain and define the customary law of the Parsees, but there is much dissension and excitement on the subject throughout the Parsee community.]

the law of the mofussil should be assimilated to the law of the presidencies ; that is to say, (speaking, however, in terms which, to be rigorously accurate, require some qualification,) should be the Hindoo law for Hindoos, the Mahomedan law for Mahomedans, and the English law for everybody else.

The future proceedings of our Commission in regard to substantive law will then be confined to the preparation of three codes founded upon these three laws, and to the framing of provisions, as far as that can be done beforehand, for the cases in which they may come into collision.

The recommendations we have now the honour to submit, are :

1. That an Act be passed declaring and enacting that so much of the law of England as is applicable to the situation of the people, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, and Bombay, or with any Act passed by the Council of India, shall be taken to be the law of the land throughout British India, except the places subject to the jurisdiction of Her Majesty's courts ; and that all persons shall be subject to that law, except Hindoos and Mahomedans. That the British statutes passed since the 13th year of King George the First shall not be considered as part of the law ; but that the Acts of the Council of India, which introduce the provisions of British statutes into India, shall be considered as part of the law, subject of course to the same limitations and exceptions as the rest of the law.

2. The general limitation comprised in the words "so much as is applicable to the situation of the people," would of itself be sufficient to exclude all that would be inconvenient in English law, and therefore to exclude English tenures, and the system of conveyancing which is founded upon them. Upon this point it may be as well to quote the words of Sir W. Blackstone, when he is speaking of an inhabited country colonized by Englishmen, which it will be recollected is the case to which we have ventured to compare that of the English in India.

Illustrating the expression, "So much as is applicable to their own situation," he says, "What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in Council." Now it would certainly be surprising if any court in this country were to hold that English tenures and conveyancing are applicable to the situation of the people. Nevertheless, in a matter of such vast importance, it will be the safest course to exclude English tenures and conveyancing by express words.*

3. Our second recommendation relates to a modification of English law which might be made by the courts in administering it. But there is one change which we think desirable, and which requires direct legislative sanction.

We recommend that the interest, whatever may be its extent, which any person, not being a Hindoo or Mahomedan, may have in real property situate without the limits of the local jurisdiction of Her Majesty's courts, shall go to the executor or administrator of such person, and be distributable, according to the Statute of Distributions, in like manner as personal property.

4. Our fourth recommendation is, that all questions of marriage, divorce, and adoption of persons not Christian, shall be decided according to the rules of the sect to which the parties belong.

5. Our fifth recommendation is, that a college of justice shall be erected at each presidency, consisting of the judges of the Supreme Court and of the judges of the Sudder Dewanny Adawlut, and that in all appeals from decisions in the mofussil under the new law, the appellate court shall consist of one judge of the Supreme Court, with or without associates.

It will be necessary that the appeals from decisions in the upper provinces in the Bengal presidency under the new law be heard at Calcutta.

Although we have endeavoured to show that, according to the analogy of the general principles of international jurisprudence, the English law became the *lex loci* of British India as soon as it became British, and although, if that doctrine is correct, the proposed law is in its nature declaratory, still we think it right that, under the very peculiar circumstances of the case, the proposed law should only operate upon the future, and that special provision should be made for the past. It is a very general and certainly a very useful maxim of jurisprudence, that every person must be taken to know the law of the country in which he resides. But we think that in this case that maxim ought to be relaxed, and that in all suits between persons, not being Hindoos or Mahomedans, brought in respect of any transaction prior to the passing of the Act, the judge should be authorized to take into his consideration what law the parties to the transaction may have supposed themselves to be living under, and to decide according to equity following that law.

If the government shall think fit to adopt the principles contained in these recommendations, we shall of course be ready to prepare an Act containing all the details which may appear to be necessary for carrying them into effect ; but as the interests of many classes would be materially affected by such a law, we would for the present suggest only that this Report should be printed and circulated, in order that those classes may have an opportunity of considering the measure, together with the reasons on which it is rested, and of petitioning government for or against it.

Our president, Mr. Amos, though agreeing in the principal recommendations of the Commission, yet differing in his views upon some points, has thought it advisable to record his sentiments in a separate Minute, which is annexed to this Report.

We submit this our Report for the consideration of your Lordship in Council.

(Signed) A. Amos.
C. H. Cameron.
F. Millett.
Indian Law Commission, D. Eliott.
31 October 1840. H. Borradaile.

Minute by the Honourable A. Amos, Esq.

It appears to me that the practical questions connected with the subject of our Report are, first, whether the usage which has prevailed of administering for all persons the law or customs of the countries or sects to which they respectively belong should now be modified by legislative enactment ? And, secondly, if it be expedient to modify, what kind of modification is it most expedient to introduce ?

There appear to be the strongest reasons for an extensive modification of the existing usage. In many instances great perplexity and uncertainty has prevailed in ascertaining the description of law or customs by which a case is to be governed ; in others, sometimes a separate, and sometimes a superadded difficulty has arisen in endeavouring to discover what the governing law or customs prescribe.

A great improvement in the administration of the justice of the country must necessarily take place, in proportion as we remove doubts with regard to the species of law to which a judge shall, in each case, refer, and as we make the ordinances of that law accessible and intelligible to him. According to the present usage, judicial inquiries have frequently to be made concerning the species of law which is to be administered to certain classes of East Indians and of Portuguese. And the species of law which is to be administered being ascertained, the judge is frequently obliged to investigate the obscure and doubtful cus-

* It has already been enacted by Act No. IV. of 1837, that all rules which prescribe the manner in which property in land may be acquired and held by natives shall extend to all subjects of Her Majesty.

toms of Armenians and of Indian Portuguese, and it is occasionally necessary to refer, for the decision of matters originating and terminating in India, to the systems of law prevalent in France, Holland, America, China, and every part of the world. Hence has arisen a variable and unsatisfactory state of law, and great uncertainty with regard to transactions connected with property belonging to large classes of individuals, many of whom are in the possession of great wealth.

An important objection may be made to any change in the rule of consulting the law or customs of the country or sect to which each individual belongs, in cases where particular classes may have cherished a reasonable confidence of being governed by a law or customs to which they are attached, which law or customs are reasonably definite, and with which, on grounds of justice or policy, it would be inexpedient to interfere. The validity of this objection will be universally recognized in the cases of Mahomedans, Hindoos, Jews, and perhaps of Parsees, though it is to be hoped that the laws of these different classes may, at a future period, be united, to a considerable extent, in one general system of law for all the inhabitants of India. But I apprehend it is obvious that the objection does not apply to East Indians, Armenians, Portuguese, or foreigners in general, whether European or Asiatic, preserving, however, the *lex domicilii* in those cases in which it is preserved by the English law to foreigners in England. And where particular classes are themselves desirous of the change, I conceive that not only all objection is removed, but a strong additional reason for modifying the present usage of courts is presented.

Secondly. If the usage of the courts is to be modified, I think there can be little difference of opinion, that the most expedient course is to establish the English law, with such exceptions and qualifications as may be convenient for the government of British subjects, and of all those who are not, like the Mahomedans and Hindoos, to be governed by their own peculiar laws. And for the sake of uniformity, it may, perhaps, be expedient to modify the English law, even further than would be proper if British subjects were alone concerned.

With regard to the exceptions and qualifications with which the English law ought to be introduced, I am inclined to agree, in the first place, that questions of marriage, divorce, and adoption should be excepted, though it is proper to observe that such exceptions are by no means usual according to the practice of nations.

The administration of law modified by equity, instead of separate courts of law and equity, held before the same or different judges, is an arrangement which necessity and convenience dictate in the mofussil. Such a practice must, I conceive, have been adopted in all cases falling under Act No. XI. of 1836. I think, however, it should be very distinctly stated, that the equity so to be administered means the defined principles of the English Chancery Courts, which may sometimes be opposed to the intentions of parties, and the supposed "equity and good conscience" in a particular case, for the sake of general rules.

It will be generally admitted that the common simple forms of conveying property, and expressing contracts of various kinds, which are used in the mofussil, should be as effectual as they have always been. In cases of mortgage, sale, lease, or the like, it would be extremely inconvenient to subject East Indians, Portuguese, Armenians, and even British subjects in the mofussil, to the observance of the technicalities required in English legal instruments. But this departure from English law may perhaps require some qualifications; for instance, it may, on consideration, be thought advisable to insist upon compliance with some of the English provisions with regard to the necessity of certain contracts or undertakings being expressed in writing; and the formalities required by the English law of wills, simplified as they have recently been, may be thought not unsuitable to the circumstances of the mofussil, and, in the opinion of British subjects at least, may be deemed essential to the secure succession to property. Upon such points I do not anticipate any material difference of opinion among the members of the Commission.

I have some doubts with regard to the general supersession of the English laws of tenure and of conveyancing, or rather with regard to the latter, permitting the use of technical forms, but denying them any imperative technical operation, except as consonant to "equity and good conscience," in the meaning according to which those terms are understood in the mofussil.

It may be expedient to define, with greater particularity than may be thought necessary for the immediate object of the Report, what is embraced under the laws of tenure and conveyancing. The parties to be affected by the proposed enactments, and the judges in the mofussil who are afterwards to administer them, may not be expected to distinguish nicely between the rules of tenure and other rules limiting or prescribing the enjoyment of real property. For example, I conceive that it might not be obvious that the Commissioners, in what they have said in regard to superseding the law of tenure, are by no means expressing any opinion concerning the propriety of superseding the English laws restrictive of perpetuities, by which parties are precluded from accumulating enormous masses of wealth for remote successors, and debarring the free alienation of their property for centuries.

A considerable part of the law of tenure and conveyancing, and of other divisions of the law of England, affecting both real and personal property, must fall of itself, for want of means of application in India, without any express exception. This is the case with regard to a large portion of the common and statute English law, introduced bodily into Calcutta at the time of granting a charter to the Supreme Court.

It appears to me that there is so much of the English laws of tenure and conveyancing, especially if a large interpretation be given to these terms, which is essential to the complete and secure enjoyment of property by a highly civilized people, that I should not feel disposed to recommend the dispensing with them generally, though particular exceptions may be very proper, and the free use of the most simple kind of conveyances be indispensable. As it is not proposed on the present occasion to alter the English law for the presidency towns, I think the departure from the law of the presidencies, in regard to British subjects having property in the mofussil, must be inexpedient, where the necessity for it is not of a very cogent nature.

With regard to the succession to real property according to the statute of distributions, it is a question requiring much deliberation, both as to the probability of the law leading to a multiplied partition of property, and as to the consequences of such partition with reference to the circumstances of India. Moreover, it is to be considered that the proposed rule will have the effect of establishing a different law of succession for British subjects in the mofussil from that which obtains in the presidency towns and in England. Under all circumstances, I do not feel prepared to recommend this departure from the law of England on the present occasion, though the succession to real property in the mofussil is a subject upon which in Council I should be anxious to invite discussion.

As to the establishment of a court of justice composed of the judges of the Supreme and Sudder Courts, it may be expected that under the proposed law appeals will sometimes involve points which only an English lawyer would be competent to decide, and sometimes points upon which it would be desirable that both Her Majesty's and Sudder judges should unite in a decision; but, judging from the experience

of what has occurred since the passing of Act No. XI. of 1836, it is probable that for some years the number of appeals of this nature will be small. A temporary expedient might be resorted to, by enabling the courts of the mofussil to state questions of English law distinct from matters of fact for the opinion of a judge of the Supreme Court, before whom the parties might be at liberty to argue the points. Ultimately, I think a court of the nature proposed in the Report will be found a useful if not a necessary measure. It may also deserve consideration whether such a court should not merge in an appellate court having jurisdiction over all the tribunals of India.

These being my views on the subject of the recommendations contained in the Report (which I hope will be found to differ but slightly from the views of my colleagues), I have further to add, with the greatest deference, that I do not attach much importance to the consideration of the questions, what ought to have been the *lex loci* after the conquest of India by the British arms; or what, according to general law, it ought to be now; provided the usage which has prevailed were superseded, and nothing were set up in its place. I am happy to find that such a very able and learned argument can be adduced to show that something very similar to what is expedient now ought always to have been the rule of law; but I do not feel prepared to give a confident assent to the conclusion at which the argument arrives. Neither, if I thought it material, do I believe that I could present any other view of the question of a *lex loci*, as applicable to the peculiar circumstances of India, which I should deem wholly satisfactory. I am glad to think that the intricacies of that question throw no practical difficulty in the way of the proposed arrangements.

(Signed) A. Amos.

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

To the Right Honourable the Governor-General of India in Council.

The undersigned Memorialists beg permission to state—

1. That your memorialists are deeply interested in the welfare of their Indian fellow-subjects, and specially of one class of them, already numerous, daily increasing and likely (as it is hoped and expected) to embrace eventually the great body of the people.

2. That the class of men referred to is that important and influential one which consists of those who, through the natural and inevitable operation of the educational and other measures now pursued by government, public societies, and private individuals, have been driven to repudiate the irrational rites and forms of idolatry and superstition; as also of those who, besides abandoning the hereditary creed of their fathers, have been led, by the light of Divine knowledge brought home to their understandings and hearts, openly to profess the Christian faith, and become members of the Christian church.

3. That this two-fold class, in common with others, not of the Hindoo or Mahomedan persuasion, such as East Indians, Greeks, Jews, Parsees, and Armenians, at present labour under sundry legal disabilities of a specific character, and are also left, in reference to many other momentous civil concerns and relationships, without any laws to guide and direct them.

4. That among the grievances more immediately referred to, and loudly and very generally complained of, may be specified the following:

1st. The effects of the coercion, and it may be cruelties, to which the religious bigotry of parents and guardians may subject those under legal age, who, as the result of enlightened conviction, arising from improved education, and other means, are impelled to renounce their ancestral religious opinions, and adopt others instead.

2d. The loss or total forfeiture of lands, goods, and other property to which such conscientious renunciation may (in certain circumstances and particular localities) render them liable.

3d. The defects of the laws relative to marriages and rights of inheritance of all classes of persons who may not be of purely British, Hindoo, or Mahomedan descent.

5. That the classes of our Indian fellow-subjects now mentioned, are already much oppressed under the foregoing and other similar grievances, and are likely to be yet more oppressed, and that therefore speedy relief and adequate remedy is anxiously desired and earnestly prayed for.

6. That as a full enumeration of particulars would prove of too great length for insertion in the body of this memorial, a statement* of the more prominent facts, natural principles, legal enactments, and remedial suggestions, will be found in the documents appended.

7. That should your Lordship in Council be too deeply occupied with other national affairs to allow the present subject to engage your personal attention, your Lordship is respectfully and humbly requested to refer this memorial, with the appended documents, to the Law Commissioners, with a recommendation that they take it into immediate and serious consideration, and prepare without delay the drafts of general and comprehensive laws, by which the grievances to which attention has now been directed may be removed, and appropriate remedies applied.

8. That as the names of some of your Lordship's predecessors are destined to go down to posterity enshrined in the heartfelt homage of tens of thousands of the native inhabitants of Her Britannic Majesty's Indian empire, who, in consequence of the peaceful and patriotic reform of abuses, have been delivered from the tyranny of many prescriptive usages, and the arbitrary enaction of many despotic laws, your memorialists earnestly hope that your Lordship will be privileged to bear away from these vast realms some similar civic trophies; and, not content with the crown of conquest, will be led by an overruling Providence to seek a more true and lasting fame in the redress of oppressive grievances, the amelioration of barbarous legal codes, the purification of the founts of equitable right and judicial power, and the grateful tribute of admiration and esteem spontaneously tendered by a relieved and benefited people, and re-echoed in hearty response from age to age.

(Signed) George Gogerly,
London Miss. Society.
Alexander Duff,
Church of Scotland Miss.
And others.

* * * * * *

Such was the statement prepared and authenticated 10 years ago.† Of it several copies were forwarded to leading individuals and committees of societies at home, who had embarked on the enterprise of Indian renovation. A partial agitation was in consequence commenced. The Court of Directors and other public bodies were memorialized on the subject. What share of influence, direct or indirect, may have been exerted by the Calcutta statement, it is impossible to ascertain. Nor is it a matter of any moment. The satisfactory result was, that early in 1832 the Court of Directors did send a despatch to the Governor-General in Council, to institute inquiry and speedily enact some adequate legislative remedy. In conformity with the declared sentiments and express request of the Honourable Court, the Indian government lost no time in giving the matter a full and deliberate consideration. The gratifying issue soon appeared. Among the Regulations of 1832, 16th October, was promulgated the following:—

"Clause 8. Such part of Clause 2, Section 3, Regulation VIII. 1795, enacted for the province of Benares, which declares that, in causes in which the plaintiff shall be of a

* The statement is a very elaborate document on various points of Hindu and Mahomedan law. The closing part of it is printed as containing all that is necessary for the purposes of the Commission.

† Note, *i.e.* about 1831.

different religious persuasion from the defendant, the decision is to be regulated by the law of the religion of the latter, excepting when Europeans or other persons, not being either Muhammadans or Hindus shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plaints or actions of a civil nature, is hereby rescinded; and the rule contained in Section 15, Regulation IV. 1793, and the corresponding enactment contained in Clause 1, Section 16, Regulation III. 1803, shall be the rule of guidance in all suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, that may arise between persons professing the Hindu and Muhammadan persuasions respectively.

"Clause 9. It is hereby declared, however, that the above rules are intended, and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the law of the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions; when one party shall be of the Hindu and the other of the Muhammadan persuasion, or when one or more of the parties to the suit shall not be either of the Muhammadan or Hindu persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The announcement of this new Regulation was hailed at the time as an invaluable boon, being an important modification of the ancient barbarous law. Still doubts and difficulties of a practical nature kept floating around the subject, casting their portentous shadows over the first timid motions of weak and irresolute minds. In order, therefore, to ascertain the present realities of the case, viewed as a question of law, certain queries have been propounded, and by competent judges answered, in substance, as follows:

1st. Does a Hindu or Muhammadan, by renouncing his ancestral faith, lose his right to ancestral property?—*Ans.* By Regulation VII. of 1832, sections 8 and 9 (quoted above), he would lose no civil right, if not an inhabitant of Calcutta. In other words, if resident anywhere in the mufassal or provinces, a native, being amenable to the mufassal courts only, which are held bound by Act of Parliament to be regulated by the enactments of the Governor-General in Council, may avail himself of the Regulation which declares that the laws and usages of particular religions "shall not be permitted to operate to deprive him of any property to which, but for the operation of such laws, they would have been entitled." On the contrary, any native resident in Calcutta, being subject to the Supreme Court, which in this respect is governed by Hindu and Muhammadan laws, would forfeit all right to property by loss of caste, which is essentially involved in a renunciation of, or apostacy from, his ancestral faith; but if the property be actually vested in the native at the time of his losing caste, by apostacy or otherwise, the case is declared to be doubtful.

2d. Does he lose his right to personal or chattel property?—By mufassal law, no; by Supreme Court law, yes.

3d. Does he lose his right to his share of family property, landed or chattel, acquired by himself (either in conjunction with the other family members or as manager of their joint affairs) previous to his repudiation of the Hindu or Muhammadan faith?—By mufassal law, no; by Supreme Court law, yes.

4th. Would ancestral or acquired property be still heritable or retainable by mufassal law, irrespective of all conditions?—No. If certain conditions were attached to the property which the inheritor or holder refuses to perform, he might thus forfeit it, even by mufassal law.

5th. What is the state of the law with reference to those who are neither British-born subjects, Hindus, nor Muhammadans?—East Indians, Parsis, Armenians, Jews, Greeks, and others make sad complaints of the discrepancy between Supreme Court and mufassal law, especially with regard to rights of inheritance. In Calcutta, the Supreme Court obliges them (not being Muhammadans nor Gentoos) to conform to the English law in this respect. In the mufassal, the judges acknowledge they have no law at all to guide them. In some districts the case will be decided by Hindu, and in others by Muhammadan law; in some, by the inheritance laws of the parent nation to which the suing parties respectively belong, and in others, by the English or canon law (that of the Pandects), according to the varying sentiments or caprice of the acting judge.

From these replies it is evident that the state of the law relative to inheritance and acquired property is still far from being satisfactory. In order, therefore, to approximate the ends of legislative wisdom, it is recommended or suggested,

First, that as it is a breach of all uniformity and a violation of all equity that any class of subjects should be without law at all, or that one law should be administered to the native inhabitants of the metropolis, and another, in many important respects entirely opposite to the native residents throughout the mufassal, the mufassal and metropolitan law be assimilated in one consistent and harmonious code, which may extend to East Indians and Parsis, &c. as well as Muhammadans and Hindus.

Secondly, that, as it is contrary to the first principles of natural reason and natural justice that a change of religious sentiments, more especially when that change involves an abjuration of error and superstition, should entail a forfeiture of that property which belongs to a man of natural right, it be enacted, that one general and all-comprehending law be framed in the spirit of the eighth and ninth clauses of Regulation VII. of 1832, or agreeably to the tenor of the admirable recommendation of one of the most learned and respected of our Indian judges, Sir Hyde East, who, in his examination before Parliament, previous to the last renewal of the charter, earnestly and powerfully "submitted to the consideration of Government that their protecting hand should be so far extended as to make provision that no native of India shall forfeit any rights of property or any personal benefit, on account of his profession of any particular faith or doctrine, which he would be entitled to and claimed by any law of title, grant, inheritance, or succession established in India, which was binding on the persons last seised or possessed, or on those from or through whom they claimed."

Thirdly, that in the event of conditions being attached to the property connected with superstitious or idolatrous usages, conditions the imposition of which may be pronounced unwarrantable, as being opposed to and therefore superseded by the higher obligations of natural justice and revealed law—conditions, the performance of which may be adjudged intolerable, as being subversive of the dictates of reason and the rights of conscience—the judge or magistrate be empowered, in accordance with the spirit of British law and the practice of the High Court of Chancery, to review, over-rule, modify, or cancel such unreasonable conditions altogether, or otherwise adjudicate, for the relief of the party concerned, agreeably to the first principles of natural equity and the suggestions of a good conscience.

The passing of a legislative enactment embodying these or similar recommendations would do much towards remedying the present untoward state of the law of inheritance and succession in this land. Apart from the many reasons urged in the "Statement of 1830," there is another, arising out of the present movements of Government itself, and the sanctioned operations of societies and individuals, which loudly challenges attention. What is the natural, the inevitable effect which must ensue, not merely from the directly evangelizing measures in progress, but from the success of the Government and other educational schemes for the enlightenment of this mighty people. From the nature of the component parts of Hinduism, contrasted with the range of European literature, science, and theology, is it not demonstrable that one grand effect, wherever a high English education is imparted, will be the demolition of those errors which constitute at once its basis and superstructure? In not such abstract or theoretic demonstration borne out by numberless facts? Listen to the testimony of one whose experience and position in native society must invest his assertions with authority. The Reformer, an English newspaper, conducted several years ago by a native editor of rank, learning, and wealth, and the organ of a large and influential body of educated Hindoos, contrasting the visible fruits of ordinary missionary exertion with those realised by the Hindu College, thus proceeded emphatically to ask, "Has it (the Hindu College), not been the fountain of a new race of men amongst us? From that institution, as from the rock from whence the mighty Ganges takes its rise, a nation is flowing in upon this desert country, to replenish its withered fields with the living waters of knowledge. Have all the efforts of the missionaries given a tithe of that shock to the superstitions of the people which has been given by the Hindu College? This at once shows that the means they pursue to overturn the ancient reign of idolatry is not calculated to ensure success, and ought to be abandoned for another which promises better success."

Without being at all pledged to the accuracy of this comparative estimate, must we not hold such a genuine native

testimony to be conclusive as to the operative power of a superior English education in overturning the superstitions and idolatries of India? If so, must not the Government perceive into what a predicament of inconsistency it reduces itself, as well as all the friends of native education, if the law of inheritance and succession be not speedily ameliorated, and made co-extensive with the wants and exigencies of the entire body of the people? An awakening and enlightening knowledge is communicated which sweeps away the gross absurdities of idolatry and superstition from the minds of those who acquire it. In this land almost all property is left burthened with conditions of an idolatrous and superstitious character. Mark, then, the dilemma into which, in consequence of the government and other educational measures, the educated Hindu is brought. If he performs the superstitious or idolatrous conditions in order to secure his property, he must, by such performance, do violence to his reason, his conscience, and his publicly avowed sentiments; in a word, he must act the part of a wicked and deceitful hypocrite. If, on the other hand, he has moral fortitude enough to resist any temptation and suffer any loss rather than submit to the sacrifice of reason, conscience, and character, he must, while the law remains unaltered, by his non-fulfilment of the superstitious and idolatrous conditions, forfeit all right to property; in a word, as if the acquired possession of superior intelligence were a crime of the first magnitude, he must, in consequence of his being the happy possessor of such intelligence, submit to the infliction of one of the highest penal severities.

But as there is in human nature an extreme repugnance to the loss of property, and as time will show that, however much power and wealth may be flattered by the interested and the needy, a course of systematic hypocrisy must eventually call forth the contempt and indignation of an enlightened community, what may we expect to be the operation of the present law as it affects the future spread of sound knowledge and intelligence among the natives? What can we expect, except that the spread of both will be vastly and indefinitely retarded? What a solemn mockery to be, on the one hand, holding out all manner of encouragements, in the shape of salaries to qualified teachers, and stipends and scholarships to promising students, to stimulate to the pursuit and cultivation of superior knowledge and intelligence; and on the other, by a continuance of the present law, holding out positive discouragements of a nature too appalling to fail of fatal success. And herein lies the strength of these discouragements. Superior intelligence, if accompanied by a good conscience, may become penal, by being attended with the deprivation of all one's possessions, and that too in such trying circumstances as to loss of caste and reputation, that the immediate punishment of death might often be more tolerable. Surely that man knows little of human nature who does not perceive in this the surest check to all inquiry, and the most powerful restraint on every desire to acquire or cultivate any knowledge which must, without a violation of conscience, issue in such disastrous results. The good things of this life take far too firm a hold of the heart of man to admit of a different inference being drawn; yea, such is the strength of that hold which the perishable treasures of this world take of all the powers and faculties of his soul, that man is not only apt to become insensible to the glories of an eternal inheritance, but apt to listen to any account of them with positive dissatisfaction, and is too often willing to forego the anticipated enjoyment of God's favour, and brave the terrors of God's wrath, rather than be induced on any account to withdraw the strength of his affections from his present possessions.

If such be the power of opposition which the enjoyment of the good things of this life ever presents to the ready reception of all truth, as opposed to error, prejudice, self-seeking, or sinful compromise, even in circumstances the most favourable, when no demand is made but the reasonable and salutary demand, not exclusively to direct towards them the affections of the heart, but transfer these to a far more glorious and enduring inheritance, who can estimate the force of resistance which a mind, pervaded in all its powers by an almost superhuman avarice, must present to the very first proposal, as well as to the incipient desire, practically to embrace any improved system of knowledge, any scheme of unbending principle, whether human or divine, the embracement and tenure of which may involve irrecoverably the total forfeiture of all that the soul naturally most values? Accurately to estimate the power of such resistance, till the lapse of time and experience have sufficiently illustrated the awful nature of the dilemma, is altogether impossible; but it is very possible, yea, very easy, to perceive how inevitable is the certainty of its existence, since the slightest consideration will suffice to show that the supposition of its non-existence would imply that the usual processes of nature are reversed and the constitution of man unhinged; that actions the most prejudicial to every worldly interest are conducted without a motive, and extraordinary effects produced, either entirely without or directly contrary to the ordinary operation of natural causes.

Let then the Government of this great empire speedily emancipate itself from the meshes and the remnants of a barbarous jurisprudence; let it, by a wholesome infusion of the spirit and principles of British justice, speedily divest itself of the anomalous and degrading attitude of appearing to sanction or offer, on the one hand, the largest bounties upon vivifying and illumining knowledge, and, on the other, to expose its fairest fruit to the consuming blight of legal pains and penalties; let it no longer, in point of apparent irreverence and inconsistency in its manifested conduct, provoke a comparison with the procedure of the man who, with the amplest proffers of recompense and reward to all that may strive to raise the most luxuriant produce from an unpromising soil, would yet guard, by the threatened interference of an armed force, against every attempt to sow the seed, or, if already somehow or other deposited, would by the visitation of flaming fire to blast and devour prevent the possibility of its ever attaining to maturity. Let the supreme Government of these realms prove faithful to the God of Providence, by dealing out perfect righteousness and judgment to the multitudes over whom it has, in a way so marvellous and unprecedented, been constituted the protector and the guardian, and the God of Providence will smile propitious on its efforts, and render its administration a source and surety of abounding prosperity to itself, a guarantee of brightening hope to the millions of the present generation, a fount of reversionary bliss to future myriads, who, as they rise in long succession, may joyously hail the continued waving of the British sceptre as the surest pledge of the continued enjoyment of their dearest rights and noblest privileges.

V.—*Propositions regarding Marriage and Divorce, chiefly as they affect Native Converts to Christianity.*

On the importance of the institution of marriage to the peace and well-being of society it were idle to dilate. Contemporaneous with the origin of man, it has survived the wreck and ruin of the fall. Scarcely any tribe, however barbarous, has been known wholly to disregard it. And in the progress of society the due observance of it has ever been found at once a cause and a consequence of advancing civilization.

It cannot therefore be without the deepest injury to any community, should any class or classes be found to exist therein, whose intermarriages, and all the grave and momentous interests which these involve, are wholly unprovided for; and, consequently, wholly unregulated by any recognised law. But such is the state of things in India. For British-born subjects, Muhammadans and Hindus, laws have been framed and promulgated. But for individuals of other races, whether pure or mixed, and more especially the large and constantly increasing body of natives who have renounced their ancestral faith, no laws whatsoever have been enacted by any established authority.

The deplorable consequences of this absence of all law on a subject so intimately interwoven with the best interests of man has long been sincerely lamented by the friends of native improvement, and by none more so than by the Christian missionaries of all denominations. In Calcutta, in particular, these have heretofore united for the purpose of endeavouring to secure some commensurate remedy for the great and the growing evil. In January 1835, after repeated discussions, they published the result of their deliberations in the form of six propositions, accompanied by brief but able explanatory notes by the acting secretary, the Rev. W. S. Mackay.

No authoritative measure having yet been founded on these or any other propositions, the subject, in so far as it concerns the case of converts to the Christian faith, has again been taken up by the missionary conference; and, after reiterated discussion at successive meetings, has been handed over to the standing committee for its final and digested report. Accordingly, the chairman of that committee begs leave now to report as follows:—

I. The Bible being the true standard of morals to a Christian government and its Christian subjects, it ought to be consulted in everything which it contains on the subjects of marriage and divorce; and nothing ought to be determined evidently contrary to its general principles.

Note.—This, with a slight alteration, is the second of the original propositions already referred to; and is too self-evident to require any comment.

II. It is in accordance with the spirit of the Bible, and the practice of the Protestant Church, to consider the State

as the proper fountain of legislation in all civil questions affecting marriage and divorce.

Note.—This is the first of the original propositions which the former secretary pronounces "nearly a truism." "No marriage or divorce," continues he, "is legal, unless it be according to the law; and whatever the law enacts, or even recognizes, is to be held valid: thus the law practically defines marriage and divorce. It may define wrongly, and place them on other than a scriptural foundation; but so it may do in regard to everything with which it meddles. Under these circumstances, the duty of the Christian is plain. He needs not to seek for such marriage or divorce as is forbidden by the Bible, though legally free to do so; and if the law refuses what the Bible allows, he must submit to its ordinance (Romans xiii. passim).

The duty of the minister is a little more complicated.

Though the state may tighten or loosen the marriage tie, more than the Bible sanctions, it is plain enough that it has no power to force him to use improperly the authority it may have delegated to him; and accordingly it may be his duty in certain cases to refuse both marriage and divorce. But it seems impossible to deny the validity of either, when sanctioned by the state, on the ground of its wanting the authority of Scripture: otherwise, as Christians are commanded to marry only in the Lord, we would be unmarrying nearly the whole world. The law, for instance, might allow two persons to marry within the forbidden degrees of relationship; but, however much he lamented this, no Christian minister would feel himself at liberty to remarry one of those persons to a third party, while the other was still alive, and the legal union undissolved. If the contracting parties were Christians, and aware of their guilt, it would be a case for church discipline; but in other cases surely common sense and charity require that the offenders should be excused. To conclude, marriage and divorce are to be held legal and valid, when recognized in any way by the state; but there may be cases where, though the Christian allows the legal right, he denies the moral rightness: it is his duty to suffer them, but not to form or share in them; to bear his testimony against them, and to search the Scriptures, that he may be enabled to choose his own path aright."

III. A mere contract, oral or written, between the parents of two parties, proposed to be united in wedlock, without the actual celebration of the marriage ceremonial, not being regarded by the natives themselves as of the essence and validity of marriage, ought not to be so regarded by the Christian Church or the Christian legislature.

Note.—It is found on inquiry that such contracts are occasionally entered into; but that they are not held by the contracting parties themselves to be of the essence or validity of actual marriage. Either parent may resile from his promise, only the party so resiling is liable to reproach or disgrace.

IV. When the marriage ceremonial, authorised by Hindu and Muhammadan law and custom, is formally celebrated between the parties, whatever be their age, we are called on by reason and Scripture to regard such marriage as civilly and legally valid, and, consequently, its obligations as mutually binding.

Note.—It ought ever to be borne in mind that marriage is a contract, both civil and religious. As its essence seems to consist in the union of a man and woman, who are pledged to live together as husband and wife, its validity cannot depend on the mode or form of the ceremonial by which it is ratified. That ceremonial may be wholly civil, or partly civil and religious, and it may vary indefinitely with the manners, customs, and sentiments of different nations in different ages. In every country, whether civilised or barbarous, there is some act, form, or ceremony which is generally held to constitute marriage, and to legitimate the children. When the question therefore is raised, whether we, as Christians, are called upon to regard those marriages as valid and legally binding which are considered as such by the tribes or nations to whom the married parties belonged at the time when the matrimonial alliance was contracted, and the matrimonial rites duly celebrated? it is humbly submitted that we are so called upon. The very expression of the Apostle, "unbelieving wife, unbelieving husband," *i.e.* heathen wife, heathen husband, of necessity imports that he regarded them as legitimately husband and wife, while in their heathen state, because so constituted and accounted by their own customs and laws. So our Saviour, when he says, "What God hath joined together let not man put asunder," seems to imply that those were "joined together by an ordinance of God," or lawfully married, or were so united and regarded by the laws and customs which prevailed in His time, though none of the parties had then become believers in Christ.

V. Renunciation of Hinduism or Muhammadanism being regarded by Hindu and Muhammadan law and usage as tantamount to civil or legal death, the non-renouncing party is at liberty to treat the other as repudiated or divorced; but the Christian convert is not entitled to avail himself or herself of the Hindu or Muhammadan law, and regard his or her voluntary renunciation of ancestral faith as of itself releasing him or her from the obligations of the previous conjugal alliance, or as rendering him or her free at once to contract another.

Note.—The law of the unbelieving party may entitle it to regard the other as civilly dead, or legally repudiated. But the law of the believing party does not entitle it to regard the other as *ipso facto* civilly dead, or legally repudiated. A change of religious opinion does not, according to Christian law, dissolve any previously contracted bonds or obligations. Should the unbelieving party, therefore, not avail itself of the conceded right or permission of its own law, but still think it good or well (*Συνευδοξει*) *i.e.* consent, wish, or will to live with the believing party, and discharge, as before, the duties of husband or wife, it is concluded that the latter or believing party is bound by the previously contracted obligation to treat the unbelieving party as husband or wife, precisely as if no change of religious sentiment had taken place. (*See* 1 Cor. vii. 12, 13, 14.)

VI. If the unbelieving party wilfully desert or appear obstinately to refuse to live with the believing party, as husband or wife, such wilful desertion or continued refusal being presumptive evidence of a real or an intended divorce, it is supremely desirable that some legal plan or measure should be devised for universal adoption, whereby the believer might satisfactorily ascertain whether he or she has been definitively cast off or formally repudiated.

Note.—This proposition assumes it as indisputable that in no case whatever, save that of adultery, is the believer entitled to sue for divorce (*see* Matt. xix. 6–9, and 1 Cor. vii. 10, 11). Whether the Hindu or Muhammadan law declare a renunciation of Hinduism or Muhammadanism to be, *ipso facto*, a just ground of divorce or not, the law of the Christian utterly disclaims the validity of any such ground. Accordingly, if the unbelieving party be willing to abide by the antecedently formed nuptial bond, the believer has no option, no alternative, as in that case there neither is nor can be any dissolution of the original marriage. But if, in consequence of the permission and sanction of Hindu or Muhammadan law, the unbeliever depart, *i.e.* separate himself or herself,—in other words, finally and formally cast off, repudiate, or divorce the believing party,—the latter not being in this case the divorcer, but the divorced, must be accounted as freed by the wilful and deliberate act of the former from the ties and obligations of the previous matrimonial union; and, consequently, at liberty to contract another (*see* Cor. vii. 15). From the present constitution of Hindu society, however, and the entire want of any legislative enactment on the subject, it is often impossible to learn the real mind of the unbelieving party; particularly if that party be the wife. She may be herself in close confinement in her father's house, or in that of some other friend. Her husband, on his conversion, becoming an out-caste, may be positively debarred all access to her. How then is he to discover her own mind, her own unconstrained will or desire, concerning the continuance of her conjugal alliance with himself? How is he to know whether she is obstinately bent and determined to avail herself of her own law, and so to disown and repudiate him for ever? Or, whether from natural affection towards him, or any other cause, she is willing to forego the right and privilege conceded by her own law, and consequently willing still to live with him in conjugal union? Some authorised plan or method by which these important points can be legally ascertained without doing unnecessary violence to natural feeling or national custom seems imperatively demanded alike by the conditions of private and social well-being, and the pressing exigency of circumstances.

VII. It is therefore humbly suggested, that, in order to ascertain the true sentiments of the unbelieving party, the magistrate be authorised, on petition of the believing party, to have the former (being at least 14 years of age in the case of a male, and 12 in the case of a female,) brought before him, in open court, or in his own private house, or in any other convenient place, there to be questioned in the presence or hearing of the petitioning party and friends, as to his or her willingness or unwillingness to live with and be considered the husband, or wife, of the latter; that, if the unbelieving party be found willing thus to live with the other, he or she be at once pronounced at liberty to do so, and immediate steps be taken to ensure the consummation of such voluntarily expressed wish; but that, in the event of a positive refusal on the part of the unbeliever, at the first examination, the same party (after the lapse of at least a twelvemonth, during which there may be ample scope for reflection on the one hand and conciliation on the other,) be again brought before the magistrate, and similarly in-

terrogated as before; that after all possible means of conciliation have been tried, should the refusal be still persisted in, the fact be publicly announced and officially recorded; and that a copy of such record, countersigned by the magistrate, be furnished to the petitioning party, as the voucher of a legal divorce.

(No. 64.)

From F. J. HALLIDAY, Esq., Junior Secretary to the Government of India, to J. C. C. SUTHERLAND, Esq., Secretary to the Indian Law Commission.

SIR,

I AM directed by the Right Honourable the Governor-General in Council to transmit to you, in order to its being laid before the Law Commissioners, a memorial from the Rev. G. Gogerly and other missionaries, with two enclosures, complaining of certain legal grievances for which they desire a remedy, and to request that the case of the memorialists may be considered by the Law Commissioners in connexion with the subject of the *lex loci* of India, now before that body.

I have, &c.

(Signed) F. J. HALLIDAY,
Junior Secretary to the Government of India.

Fort William, 10 May 1841.

APPLICATION OF MISSIONARIES TO REMEDY THE DISABILITIES OF NATIVE CHRISTIANS.

From J. C. C. SUTHERLAND, Esq., Secretary to the Indian Law Commissioners, to T. H. MADDOCK, Esq., Secretary to the Government of India, Legislative Department.

SIR,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter under date the 10th instant, and of the memorial therewith transmitted, which they are requested to take into consideration in connection with the subject of the *lex loci* of India.

2. The memorial refers more particularly to the situation of natives who have abandoned the religious creed of their fathers, many of whom, it is stated, have become members of the Christian Church. This two-fold class, it is represented, "at present labour "under sundry legal disabilities of a specific character, "and are also le[redacted]rence to many other momen- "tous civil co[redacted] relationships, without any "laws to g[redacted] them."

3. On a[redacted]e draft of an Act for declaring the *lex l*[redacted]itories subject to the government o[redacted]ndia Company without the local jurisdic[redacted] Majesty's Supreme Courts, which has bee[redacted]d by the Law Commissioners under the instructions conveyed in your letter dated 11th January, the Governor-General in Council will perceive that persons in the circumstances stated are recognized as subject to the *lex loci*, and that a general provision has been made to guard persons in such circumstances from any loss or forfeiture of rights in consequence of their renunciation of the religion of their fathers.

4. In Note (*i*) appended to the Draft Act, the Commissioners have expressed their opinion that the law to be administered by Her Majesty's Courts should be modified so as to afford the same protection to persons in similar circumstances within their jurisdiction respectively.

5. The grievances complained of in the memorial are reduced to three heads. Those that fall under the third head will be remedied by the application of the *lex loci* to persons in the circumstances stated, by which questions relative to marriages contracted subsequently to their change of religion, and rights of inheritance depending on such marriages, and rights of inheritance generally to property possessed by such persons under titles not depending on Hindoo or Mahomedan law, will be determined.

6. The grievances stated under the second head will be prevented by the provisions in section XII. of the Draft Act in all the territories under the government of the East India Company, excepting the places within the local limits of the jurisdiction of Her Majesty's Supreme Courts; if similar provisions are enacted for those courts, the measure will be complete.

Hindoo or Mahomedan is liable by renouncing the religion of his father.

7. The possible grievances set forth under the first head will be prevented in some degree if the provisions in sections XI. and XII. are made the general law, as sons or daughters, under the circumstances supposed, will be secured in their right to maintenance from their fathers; and if they are at an age at which, by the law of England, they would be considered competent to exercise a discretion in the matter of religion, they will be entitled under the *lex loci* to claim such protection as the law of England affords against any coercion or oppression used to deter them from following their new religion.

The coercion and cruelties to which persons under legal age may be subjected by parents or guardians in consequence of their changing their religion.

8. In framing the code of substantive law, it will be an object to define the relative rights and duties of parents and children. At present the Law Commissioners are not prepared to offer any specific suggestions on the subject, and it does not appear to them that there is an urgent occasion for special legislation upon it.

I have, &c.

(Signed) J. C. C. SUTHERLAND,
Indian Law Commission, Secretary.
22 May 1841.

To the Right Honourable GEORGE, Earl of AUCKLAND, G.C.B., Governor-General of INDIA in Council.

IN compliance with the instructions of Government, conveyed to us in Mr. Secretary Maddock's letter of the 11th January last, we have now the honour to transmit a Draft Act, upon the principle of the four first recommendations of our Report of the 31st October 1840, in the form of an Appendix to that Report.

2. On the 10th ultimo, Mr. Secretary Maddock addressed a letter to our Secretary, transmitting a Memorial,—from the Reverend George Gogerly and other Missionaries, with two enclosures,—complaining of certain legal grievances for which they desire a remedy. Mr. Maddock's letter conveyed to us the wish of Government that we should consider the Memorial in connexion with the subject of the *lex loci* of India.

3. We have accordingly done so, and we think that the provisions of sections X., XI., and XII. will afford a remedy for the grievances complained of,—as far at least as such an object can be properly connected with the other purposes of this Act.

4. We submit the Draft *, together with some explanatory notes we have appended to it, to the consideration of your Lordship in Council.

A. AMOS. D. ELIOTT.
C. H. CAMERON. H. BORRADAILE.
F. MILLETT.

Indian Law Commission,
22 May 1841.

MINUTE by the Honourable H. T. PRINSEP, dated the 29th April 1842.

I AM sorry I cannot agree to the principles on which the propositions of the Law Commission in regard to the *lex loci* of India are based.

The Commission state it to be doubtful what is the substantive civil law to which parties not being natives of Great Britain, and not Hindoo or Mussulman, are subject, and add that a practice has grown up in the courts of the East India Company of administering their own law to such persons.

Now this seems to me to be an erroneous basis on which to found any law upon this subject, for it is a well-known and fully recognized principle in all eastern countries, from China even to Smyrna and

* The Draft is printed, *infrà*, p. 72, after the three next following papers, as published by the Government of India.

Constantinople, that foreigners, denizen Zimmees (*i.e.*, submitting enemies), and licensed residents of all kinds, if not Mahomedan or of the religion of the country, shall bring with them for all domestic transactions their own customs and laws, including their own rites of marriage and rules of inheritance.

Our courts, instead of being chargeable with allowing a new practice to grow silently up to this point, have only recognized and acted upon the law they found in force, that is, the law applied to Europeans when they were mere licensed settlers and traders residing under sufferance in the ports and cities of India.

The law of England, which is much less liberal on this point, is based on principles that can never, I conceive, be extended to Asiatics, and its origin will not bear close investigation ; I cannot consent, therefore, to recommend to the Home Authorities the adoption of such a law as that recommended by the Law Commission, which, beginning with a declaration that it has hitherto been doubtful what was the law of India in respect to foreigners, and that in consequence of such doubts an erroneous practice had grown up, proceeds broadly to lay down that henceforward all foreigners, Asiatic as well as European, shall in all matters of inheritance be dealt with according to the law of England, modified only by the removal of the distinctions between real and personal estate.

But though I disapprove of the basis of this law, as it is now drafted, I am fully sensible of the disadvantages that arise from uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognized by the family of the deceased. Although, therefore, I would not hastily abrogate the recognized and well-understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, I should have no objection to allowing to English law such a preference as should leave it to be the law of distribution whenever another special law is not pleaded and put in evidence.

This will allow Armenians and Christians of the half race, and any other class that pleases, to take the benefit of English law, and so the Portuguese and other European foreigners, unless these latter lay claim to their own law, which assuredly they have as much right to do in respect to their estates in the interior, some of which are very ancient, as we English have in respect to the estates our ancestors acquired at the same early period.

I object to the terms of sections X., XI., and XII. of the Law Commissioners' draft of law.

In section X. it is provided that the Act is not to apply to any Hindoo or Mahomedan, or to the estates and property of such, "unless such Hindoo or Mahomedan shall have renounced his religion," implying that upon renunciation his estate is to be administered to according to English law.

Section XI. provides that no one by renouncing is to acquire or deprive others of any rights of property.

Such a law as this would, as it seems to me, leave things in a strange confusion. *A*, a Hindoo, has turned Christian. His wife is still Hindoo, or may be Christian likewise. His estate, however, is to go by English law, and he may will it away to the prejudice of both widow and brothers. If he die intestate, the administration is still to be taken out by the widow, being a Hindoo, as heir of a Christian and British subject, and the family have thus to receive a strange law of which they are quite ignorant.

I would leave out both these sections, if the Act be ever passed, as imperfect and impossible of application, besides being calculated to do much mischief, by exciting apprehension that they are preparatory to an attempt to produce extensively the status for which the Government thus deems it necessary to legislate.

I have no objection to section XII. standing, provided the word "abrogated" be changed for "shall not be enforced by any British court."

We cannot pretend to abrogate what is matter of religious belief, and supposed to have revelation for its origin.

I would here remark, that if whatever calls itself Hindoo or Moosulman is to be left *in statu* so far as concerns the law of inheritance, &c., very little will be done to simplify the question of substantive *lex loci*, for the special customs of Goosaines, Jains, and all the various heterodox castes and races of India come within the word Hindoo, and the law of inheritance to them is not the law of Menu, nor the Metacshara and Dyabhaga, but their own special customs, as proved in evidence.

In like manner there are many varieties of Mahomedan law, and the Sheeas, Malikees, and others claim always and have been allowed to have their estates descend and be administered to according to their special doctrines.

Even supposing, therefore, the Draft of Act proposed by the Law Commissioners to be made law, the courts administering it will have to take evidence in regard to special customs, and be in the same uncertainty as to what law is to be applied to the particular Hindoo and Mahomedan estate before them, as they are now under the universally recognised principle of Asia, which respects the laws and customs of the settler of whatever race he may be, and allows the claims of inheritance to his estate to be preferred and decree of distribution to be made under that law.

In order to make their law more complete, the Law Commissioners ought, as it strikes me, to have laid down in respect to Mahomedans, that the Soonee law of Uboo Huneefa and his school should be the substantive law for Mahomedans, unless the fact of a difference of sect and other specific known law be established in respect to the deceased.

And so in respect to Hindoos the law of Menu, with specification of the tract in which the Mitholo varieties are to be the rule. This principle in respect to these two great classes would be quite consistent with the further provision, that for strangers the English law should be the rule, when other special law of the deceased might not be pleaded and proved.

We are not going to pass this law at present, or I should deem it necessary to go more in detail into this subject.

I cannot, however, let it [redacted]ome to be submitted eventually to Parlian[redacted] some protest against the principle which[redacted]nted in its preparation, which takes no a[redacted]r of the recognized practice of Asia in[redacted] estates of aliens, which I regard as a su[redacted]already established for them, and acted u[redacted] in all the courts of India.

(Signed) H. T. PRINSEP.

MINUTE by the Honourable A. AMOS, dated the 2nd May 1842 ; and Note by the Honourable the President, dated 7th July 1842.

I do not think it necessary, for the purpose of legislation, to come to a decision whether we are satisfied with the theory of the Law Commission, that British law is the *lex loci* of India, or with that of Mr. Prinsep in favour of a custom of Asia. We have before us a practice pretty clearly established, at least for the mofussil courts, which is consonant to the alleged *lex Asiatica*. That practice is attended with great uncertainty and inconvenience, especially where a preliminary question is doubtful, viz., as to what the law of the individual must be deemed to be ; a question not depending on domicile, but involving inquiries of pedigree and legitimacy, besides many points of law which are by no means settled.

The inconveniences of the existing practice being manifest, it becomes a subject of consideration how far it is expedient to remedy them by the introduction of the British law. Such a measure would remedy the inconveniences which attend the present system ; but unless the British law be introduced

with exceptions and qualifications it would entail far greater evils than those which it would remedy.

The Law Commission have accordingly admitted that in no case can the whole code of English law be made applicable to any class of persons in the mofussil. The more complicated provisions of that code must be excepted. Again, upon certain matters which have, in some measure, a religious aspect, such as marriage, the Law Commission do not propose to interfere. They think it would be imprudent also to interfere with Mahomedans and Hindoos, whether orthodox or heterodox.

Discussions on the subject have taken place in Council. I collected that it was the general opinion that in the cases of East Indians and descendants of Portuguese, in which so much difficulty arises as to determining what is the law of the individual, the proposed Act drafted by the Law Commission would be highly beneficial. With regard to Armenians the difficulty is of another kind; viz., assuming that the law of the individual is that of Armenian customs, what are those customs? As the Armenians appear to be desirous of being relieved from the uncertainties attending their own customs, I did not collect that (if their wishes were clearly ascertained) there would be any reluctance on the part of the Council to extending the Act to this class of persons.

As regards all other European foreigners, I think there are many reasons for including them, and I do not see that they can complain of being subject to the same law by which they would be bound if they went to England or another English colony, especially after becoming domiciled. This indeed is agreeable to the general custom of Europe, especially as regards the transmission of immoveable property.

But there are other classes of persons in India, permanently or transiently residing there, who are neither of European origin, nor Armenians, Mahomedan, or Hindoos, even in the most extensive application of the two latter appellations. I do not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but, independently of this sect, I doubt whether it would be expedient to make further exceptions. However, as much difference of opinion prevails on this subject, I think the consideration of these cases may well be postponed so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases do not know what law they are subject to, and in others, or sometimes the same, are said to be governed by laws the provisions of which no one can define with accuracy.

There is no doubt much difficulty and delicacy in the question, where Hindoos or Mahomedans turn Christians; but I think the principle ought to be that may become subject to British law, but that this shall not prejudice any vested rights in other Hindoos or Mahomedans.

(Signed) A. Amos.

LEX LOCI.

EXTRACT of a General Letter from the Government of India to the Honourable the Court of Directors in the Legislative Department, dated 17 March 1843, No. 6.

Laws under Consideration. — Law Commissioners' Lex Loci Report and Draft Act, declaring to what substantive law persons in the Mofussil, not subject to Hindoo or Mahomedan civil law, shall be subject. The case of native converts to Christianity also provided for.

31. On the 22nd of May 1841 the Law Commissioners replied to the reference made to them (as reported in para. 84 of our despatch, No. 23, dated 29th November 1841) on a Memorial from certain Missionaries at Calcutta, representing the legal grievances under which native converts to Christianity laboured.

32. On the same date the Commissioners submitted the draft of an Act for declaring the *lex loci* of the territories subject to the Government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts. This draft was prepared under the instructions from this Government, reported to your Honourable Court in our Special Letter, No. 2, of 1841, dated the 1st of February.

33. The Memorial of the Missionaries referred to the situation of natives who have abandoned the religious creed of their fathers, many of whom have become members of the Christian Church. The Commissioners observed, that in the Draft Act, persons in the circumstances stated were recognized as subject to the *lex loci*, and that a general provision had been made to guard persons in such circumstances from any loss or forfeiture of rights, in consequence of their renunciation of the religion of their fathers.

34. The Commissioners were of opinion that the provisions of Sections X., XI., and XII. would afford a remedy for the particular grievances complained of, so far as such an object could be properly connected with the other purposes of the Act.

35. Upon the Draft Act of the Law Commissioners, your Honourable Court will find two minutes recorded by our colleagues, Messrs. Prinsep & Amos, dated respectively the 29th April and 2nd May.

36. Mr. Prinsep recorded his particular objections to the terms of Sections X., XI., and XII. of the Law Commissioners' Draft, and he could not assent to the adoption of the Draft itself, proceeding as it did on the assumption that it has hitherto been doubtful what was the law of India in respect to foreigners, and that in consequence of such doubts an erroneous practice had grown up in the courts of the East India Company. Upon this assumption the Draft proceeded to lay down, that henceforward all foreigners, Asiatic as well as European, shall, in all matters of inheritance, be dealt with according to the law of England, modified only by the removal of the distinctions between real and personal estate.

37. But though disapproving of the basis of the law as it was drafted by the Law Commissioners, Mr. Prinsep was fully sensible of the disadvantage that arises from uncertainty, and of the necessity of prescribing what the law and practice shall hereafter be, more especially in cases where no special law is alleged and established as that recognized by the family of the deceased. Athough, therefore, Mr. Prinsep would not hastily abrogate the recognized and well-understood principle which allows to foreign settlers the privilege of handing down their property to their posterity according to the law of their nation and sect, he had no objection to allowing to English law such a preference as should leave it to be the law of distribution, whenever another special law was not pleaded and put in evidence.

38. Mr. Amos explained the grounds on which the Law Commissioners had proceeded, and stated, that he understood the general opinion of the Supreme Council to be, that in the cases of East Indians and descendants of Portuguese, in which much difficulty existed as to determining what was the law of the individual, the proposed Act of the Law Commissioners would be highly beneficial. With regard to Armenians, the difficulty was of another kind; viz., assuming that the law of the individual is that of Armenian customs, what those customs are? As the Armenians appeared to be desirous of being relieved from the uncertainty attending their own customs, Mr. Amos did not collect that (if their wishes were clearly ascertained) there would be any reluctance on the part of the Council to extending the Act to this class of persons.

39. As regards all other European foreigners, Mr. Amos thought there were many reasons for including them, and he did not see that they could complain of being subject to the same law by which they would be bound if they went to England, or to any other English colony, especially after becoming domiciled. This, indeed, was agreeable to the general custom of Europe, especially as regarded the transmission of immoveable property.

40. But there were other classes of persons in India, permanently or transiently residing in it, who

were neither of European origin nor Armenians, Mahomedans or Hindoos, even in the most extensive application of the two latter appellations. Mr. Amos did not suppose that we should be desirous of interfering with the usages of the Parsees, unless at their own desire; but, independently of this class, he doubted whether it would be expedient to make further exceptions. As, however, much difference of opinion existed on the subject, Mr. Amos advised that the consideration of these cases might be postponed, so as not to impede the attainment of great benefits by extensive classes of the community, who in various cases did not know to what law they were subject, and in others, and sometimes in the same cases, were said to be governed by laws, the provisions of which no one could define with accuracy.

41. Mr. Amos was aware that much difficulty beset the question, where Hindoos or Mahomedans became Christians, but he was of opinion that the principle in such cases ought to be, that the parties may become subject to British law, but that this should not prejudice any vested rights in other Hindoos or Mahomedans.

42. Our President looked upon the whole question as one of peculiar difficulty and delicacy; and as it bore on the interests of many classes of persons, he thought it would be dangerous to legislate until opinions were less divided. In conformity, therefore, with his suggestion, we have requested the several subordinate governments to communicate their own opinion, as well as the opinion of the Judges of the Sudder Courts, and of other officers of judgment and experience in the several Presidencies on the Law Commissioners' Report and Draft of Act.

DRAFT of an ACT for declaring the LEX LOCI of the TERRITORIES subject to the GOVERNMENT of the EAST INDIA COMPANY without the JURISDICTION of HER MAJESTY'S SUPREME COURTS.

FORT WILLIAM, HOME DEPARTMENT, LEGISLATIVE, the 25th January 1845.

THIS Draft having been sent up by the Law Commission, with explanatory notes, is now published with those notes, by order of the Right Honourable the Governor-General in Council.

ACT No.—— of 1845.

WHEREAS it is doubtful what is now the substantive (*a*) law of the place (*b*) in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay:

And whereas also a practice has grown up in the courts of the East India Company of administering to every person, not being a Hindoo or Mahomedan, in all cases not specially provided for, the substantive law of the country of such person, or of the country of the ancestors of such person, whenever such substantive law is not inconsistent with equity and good conscience:

And whereas it is lawful for aliens to hold lands in the said territories, and there is a great and increasing number of aliens in the said territories:

And whereas, also, the diversity of laws, which the said courts of the East India Company, according to the said practice, may have to administer, is likely to occasion great and increasing inconvenience and difficulty:

And whereas, also, there is in the said territories a great and increasing number of persons, whose legal connexion with their country or with the country of their ancestors is interrupted by illegitimacy, and it is doubtful whether the said practice is applicable to such persons:

And whereas, also, the said courts of the East India Company will, in the application of the said practice, have frequently to determine intricate questions of pedigree before they can decide what law they are to administer:

And whereas, also, there is in the said territories a large number of Armenians, and it is doubtful what is the Armenian law:

And whereas, also, the English substantive law is the law of the place (*b*) in such parts of the territories subject to the government of the East India Company as are within the local jurisdiction of Her Majesty's Supreme Courts aforesaid; and it is expedient that the law of the place in the territories subject to the government of the East India Company, within and without such jurisdictions, should, as nearly as circumstances will permit, be the same:

And whereas, also, there is a large and increasing number of British subjects in the territories subject to the government of the East India Company, and it is lawful for such British subjects to hold lands therein, as well without as within the local jurisdiction of Her Majesty's Supreme Courts aforesaid; and the Courts of the East India Company now administer English substantive law to such British subjects, whenever such substantive law is not inconsistent with equity and good conscience, and it is expedient that they should continue to do so:

I. It is hereby enacted, That from and after the day of in the year 1845, the substantive law of the place in the territories subject to the government of the East India Company, without the local jurisdiction of Her Majesty's Supreme Courts aforesaid, shall be so much of the substantive law of England as is applicable to the situation of the people of the said territories, and as is not inconsistent with any regulation of the codes of Bengal, Madras or Bombay, or with any Act passed by the Council of India, or with this Act.

II. Provided, and it is hereby enacted, That nothing in this Act contained shall apply, so far as regards marriage, divorce, or adoption, to any person professing any religion other than the Christian religion.

III. Provided also, and it is hereby enacted, That nothing in this Act contained shall be construed to prevent any court from deciding any case according to any law or usage immemorially observed by any race or people not known to have been ever seated in any other country than the said territories, or from deciding according to any good and lawful custom.

IV. And whereas, also, it is held by Her Majesty's Supreme Courts at Calcutta, Madras, and Bombay, that (*c*) no Act of Parliament which has been passed since the thirteenth year of His Majesty King George the First extends to India, unless there be in such Act a special provision to that effect; and it is expedient, as aforesaid, that the substantive law of the place in the said territories, within and without the local jurisdiction of the last-mentioned courts, should be, as nearly as circumstances will permit, the same:

It is therefore enacted, That no Act of Parliament passed since the thirteenth year of King George the First shall be held to be extended to any place in India by virtue of this Act, unless there be in such Act of Parliament a special provision for extending it to India.

V. And whereas no Court of the East India Company is, in respect of the administration of English law, a court of law, as distinguished from a court of equity and good conscience; and doubts might arise in what way such courts ought to adjudicate the legal rights of the persons subject to the substantive law of the place enacted by this Act; and to modify such legal rights whenever equity and good conscience require; (*d*)

It is hereby enacted, That the said courts of the East India Company shall adjudicate such legal rights, and modify the same, whenever equity and good conscience require, in the same way in which the said courts of the East India Company now adjudicate and modify the legal rights of British subjects.

VI. And whereas it is not expedient that the distinctions (*e*) known in English substantive law between real property and personal property should subsist in the territories subject to the government of the East India Company without the local jurisdiction of Her Majesty's Supreme Courts aforesaid;

It is hereby enacted, That all immoveable property situate within the territories subject to the Government of the East India Company, and without the local jurisdiction of the said Supreme Courts, and every interest in immoveable property so situate, shall be regulated by the rules which regulate personal property according to the substantive law of England, and shall be adjudicated upon accordingly in all courts within the said territories, whether established by royal charter or otherwise.

VII. Provided, and it is hereby enacted, That nothing in this Act contained shall be construed to affect the distinction (*f*) recognized by the law of England, as well as by the law of other civilized nations, according to which succession to immoveable property of a person deceased follows the law of the place where such property is situate, while succession to moveable property of a person deceased follows the law of the place of the domicile of such person.

VIII. And whereas it is probable that a High Court of Appeal will be established at Calcutta, or at each of the three Presidencies, which will supersede all the functions whereby the several Supreme Courts and Sudder Courts now correct the decisions and control the proceedings of the inferior Courts; but it is uncertain how much time may elapse before such High Court of Appeal can be established: It is therefore hereby enacted, That until the establishment thereof, in all cases to be decided under this Act, an appeal shall lie from the decision of any of the Courts of the East India Company to the Supreme Court of Fort William, or Fort St. George, or Bombay, according as the suit may have been commenced in the Provinces subordinate to either of the said Presidencies; and such Court shall have the same powers, as to suspending or allowing execution of the judgment or decree appealed against, and as to taking security for costs, or for the performance of the decree or judgment of the said Courts of the East India Company, as the Sudder Courts have in other cases of appeal from the said Courts of the East India Company, and shall also make rules of practice for the conduct of the said appeals in all other respects, conforming in substance and effect as nearly as possible to the course of procedure of the said Sudder Courts.

IX. And it is hereby enacted, That in every suit brought in any Court of the East India Company, wherein the matter out of which the cause of action arose shall have had place before the said day of 1845, the decision shall be according to the law or laws under which the parties shall appear to the Court to have supposed themselves to be living, or according to equity and good conscience, following such law or laws.

X. And it is hereby enacted, That nothing hereinbefore contained shall apply to any Hindoo or Mahomedan, or to any property of any Hindoo or Mahomedan, (*g*) unless such Hindoo or Mahomedan shall have renounced either of those religions and shall not have adopted the other of those religions. (*h*)

XI. Provided always, That no Hindoo or Mahomedan shall, in consequence of anything in this Act contained, by renouncing the Hindoo or Mahomedan religion, lose any rights or property, or deprive any other person of any rights or property.

XII. And it is hereby enacted, That so much of the Hindoo and Mahomedan law as inflicts forfeiture of rights or property upon any party renouncing or who has been excluded from the communion of either of those religions shall cease to be enforced as law in the Courts of the East India Company.

XIII. Provided always, and it is hereby enacted, That if in any case falling within the provisions of Section XI. or XII. it shall appear to the Court that the application of any of those provisions would outrage the religious feelings of any party against whom the Court is called upon to apply them, the Court shall state the facts of the case, and submit the statement for the decision of the Court of Appeal, who shall decide whether the provisions shall be applied or not, and with what modifications, and whether any and what compensation shall be given to any party for the loss which such party may sustain in case the said Court of Appeal should decide that the said provisions should not be applied.

XIV. And it is hereby enacted, That nothing in this Act contained shall apply to the Court of the Recorder of Prince of (*i*) Wales Island, Singapore, and Malacca. (*k*)

NOTES TO THE DRAFT ACT.

(*a*) *Substantive Law.*

For two reasons we think it right to explain the sense in which we have used this expression.

First, Because, though the expression has been used in treatises of jurisprudence and in official reports, it has not, we believe, been before used in legislation.

Second, Because we believe the expression has been used, or at least understood, in a sense different from that which it is intended to bear in this Act.

It has been used or understood, we believe, as if it included the definitions of crimes; as if there were substantive criminal law, and substantive civil law; as if the only subject matter of the whole *corpus juris* excluded by it, were the rules of pleading, evidence, and procedure. When the expression is used in this sense, the rules of criminal pleading, evidence, and procedure are considered as adjective to the penal code, or definitions of crimes,—the penal code itself being considered not as adjective to the civil code, but as substantive.

In this Act we intend the term to include only the definitions of rights and obligations; and we consider the definitions of civil injuries and the definitions of crimes as parts of adjective law.

This, we think, is clearly the correct import of the expression. The definitions of civil injuries and of crimes are evidently only necessary for preventing infractions of rights and obligations.

If we suppose every member of the community to have sufficient motives, independently of legal proceedings, to respect the rights of his neighbour and his own obligations, there would be no use in defining civil injuries or crimes; that is to say, definitions of civil injuries and of crimes are of no use, except as adjective to definitions of rights and obligations.

We have also the authority of the Fourth Report of the English Commissioners of Criminal Law for this use of the expression:

"It is, in the first place, material (they say) to advert generally to the relation which the criminal branch of the law bears to the whole system. Every system of municipal law consists necessarily of two distinct parts, which may be distinguished as substantive and adjective laws. The former comprehends the definition of civil rights and obligations; while it is the office of the latter to prevent the occurrence of certain grave infractions of such rights and obligations. And one mode of prevention, namely, the infliction of punishment on those who offend, in order, by example, to deter others from offending, constitutes the great principle [illegible] punishments is on which the law respecting crimes and [illegible] founded," p. 6.

(*b*) *Law of the Place.*

Lex loci. The Hindoo law and the Mahomedan law are properly the laws of persons belonging to the Hindoo and Mahomedan religions; they cannot, therefore, be considered as *lex loci* in the sense in which English law is the *lex loci* of the Presidencies, although they are the laws of a vast majority of the inhabitants.

(*c*) *Application of Statutes to India.*

We wrote to the Judges of the Supreme Courts of Madras and Bombay to ascertain if this proposition is correct as to their Courts, and have been favoured with early answers. The answer of Sir Robert Comyn and Sir Edward Gambier shows that the proposition is correct as regards the Supreme Court of Madras. By Sir Henry Roper's answer, it seems that the question has never been decided at Bombay. From the evidence of Sir Ralph Rice, however, before the Select Committee of the House of Lords, 1830, it appears that the 13th year of King George the First has been considered at Bombay also as the epoch at which English law was introduced by the establishment of the Mayor's Court.

We observe also, in the Reports of Cases decided by the Sudder Dewanny Adawlut of Bombay, Vol. I., p. 333, that a case is cited by the Advocate-General from the "Courier" newspaper of the 30th January 1818, in which the learned Recorder of that day is made to say that "the first charter of justice might be said to be that of George I., in 1726, creating the Mayor's Court at each of the three Presidencies." Perhaps, therefore, the allegation in the preamble to this section may be considered sufficiently proved.

(*d*) *Equity and Good Conscience.*

The Mofussil Courts, as regards English law, are not Courts of Law, but of Equity.

They now administer to British subjects the same system which is administered by English Courts of Equity. See the case of Hoo *v.* Peter Marquis, Reports of the Sudder Dewanny Adawlut, Vol. IV. p. 243.

But one very remarkable difference in their circumstances causes an equally remarkable difference in the mode in which they administer that system. They are courts administering English equity in a country in which there are no courts of English law. This is a vast advantage. A very great portion of the business of English courts of equity consists of attempts (not always, though generally effectual) to prevent or remedy the mischievous effects of proceedings in courts of law. Where there are no such courts, this function has of course no existence. The Mofussil Courts have nothing to do but to administer equity, following law of course, but unembarrassed by the co-existence of courts of law; that is to say, to give to every suitor his legal rights when there is nothing inequitable in them; when there is anything inequitable, then his legal rights modified and corrected by equity. Again, as every British subject who sues in the Mofussil is seeking equity, he is obliged, according to the well-known rule, to do equity as the price of obtaining it.

The effect of this Act will not be to introduce any new system into the Mofussil courts, but merely to extend to all persons who are not Hindoos or Mahomedans that system which is already administered to British subjects.

(*e*) *Distinction between Real and Personal Property.*

This, in the early stages of English law, would have been a very important change. But now every man may by that law dispose of his real property by will as he pleases. And by Mr. Fergusson's Act the real estates of British subjects in the Presidencies are liable for debts of all kinds. Practically, therefore, this change will not be a great one, especially when we take into account the circumstance that all the Mofussil courts are courts of equity, in which kind of courts the distinctions between realty and personalty are not looked upon with favour.

We apprehend that the law of primogeniture, as it now exists in England, has not much direct operation, because the greater part of landed property is either in settlement or passes by will. It is probable, however, that the original law of primogeniture, excluding as it did any testamentary power, has still a considerable indirect effect through the feelings of landed proprietors. It probably induces them [redacted] ents and wills to *make an eldest son*, as it is [redacted] among political economists has [redacted] *ry* law of equal partition is beneficial [redacted] lieve it has not been unfrequently [redacted] man is left at liberty to divide [redacted] after his death, the national [redacted] nt of his making no provi- [redacted] ure should prevail. [redacted] the power to settle and [redacted] erty exists, the [redacted] ing in favour of primo- [redacted] omething approaching to primogeniture, with its effect upon wills and settlements, is beneficial or not, is a question too wide to be discussed in this note. Nor is such a discussion necessary for the present purpose; because the feeling does not exist with regard to the real property of Englishmen in India, and assuredly could not be created in such circumstances by merely permitting the remnant of the ancient English law of primogeniture to continue in existence. The existence of that remnant, therefore, surely holds out no prospect of advantage equivalent to that of having one simple and uniform law of succession for all kinds of property.

There is one distinction between moveable and immoveable property, which we believe is in practice observed in the Mofussil, and which we think ought to have the sanction of law. We mean the distinction introduced into English law by the Statute of Frauds, which makes writing and signature necessary to a conveyance of real property. But we think a provision to this effect will more properly form the subject of a separate Act than of an exception to this section.

(*f*) *Distinction between Moveable and Immoveable Property.*

It cannot be denied that, by the recognition of this distinction, the difficult question of domicile will frequently arise for decision in the Mofussil courts, and also that those courts will frequently have to inquire what is the law of the domicile of a deceased person in respect of succession to moveable property. These difficulties, however, cannot be removed without making British India an exception in this respect to other British possessions, and perhaps to the whole civilized world; and even if we thought it advisable to propose the abolition of the distinction, we should doubt whether any Legislature, except the Imperial Parliament, could, with perfect propriety, alter a part of the law which seems to have a near relation to the *comitas inter gentes*.

When we come to the codes of substantive law we shall go fully into this subject, and consider how far we can consistently with a due respect to the general practice of nations, relieve the courts of this country from the necessity of applying any other law than that of the place.

(*g*) *Difference between the Law administered to Hindoos and Mahomedans in the Presidencies and in the Mofussil.*

The right of Hindoos and Mahomedans to have Hindoo and Mahomedan law administered to them is limited, both in the Presidencies and in the Mofussil; but the limitation is not the same in the two cases. Neither is the law administered to these two classes in cases where they are not entitled to their own laws, the same (practically at least) in the Presidencies and in the Mofussil.

When we are making the three codes of substantive law which appear to be required for the three great classes of which the population of this Indian Empire consists, viz. Hindoos, Mahomedans, and persons who are neither Hindoos nor Mahomedans, it is to be hoped that we may find it possible to give to the two former classes the same law, in the cases in which Hindoo and Mahomedan law are not now specially reserved to them, or may not continue to be specially reserved to them, as that to which the last class will be subject in such cases. It is also to be hoped, or rather it is not to be doubted, that we shall be able to provide that the legal condition of each of the three classes shall be the same respectively in the Presidencies and in the Mofussil.

This Act, however, is intended for the last class only, as any provisions affecting the other two would be out of place in it.

(*h*) *Consequences of Persons changing their Law.*

According to the view expressed in Note (*b*), these persons no longer professing the Hindoo and Mahomedan religions, the Hindoo and Mahomedan laws will no longer be applicable to them respectively. They will become prima facie subject to the *lex loci*. It is necessary, however, to provide against any loss of rights to them, or to any other persons through them, by this change of law, This is done by Section XI.

But besides the change from Hindoo and Mahomedan law to the *lex loci*, which owes its origin to this Act, there is a loss of rights consequent upon renunciation of the Hindoo and Mahomedan religions, by the operation of the two systems of law belonging respectively to those religions. It was to prevent this loss of rights that Section IX., Regulation VII. of 1832, of the Bengal Code, was enacted. Section XII. of this Act will make the law uniform from this point throughout the territories under the government of the East India Company, except within the limits of the local jurisdiction of Her Majesty's Supreme Courts. We think it ought to be the same within those limits, but to make it so does not fall within the scope of this Act.

(*i*) *Settlements in the Straits of Malacca.*

The whole of the settlements in the Straits being subject to the law which is administered by the Recorder's Court, there is no room for the application of this Act to those settlements.

(*k*) *Extension of Acts of the Council of India.*

We at first thought of extending, by a general provision in this Act, all the Acts of the Council of India which have extended the provisions of Acts of Parliament to any parts of India, or to any persons in India. But having looked through those Acts, we believe it will be a more expedient course to make separate and special provision for that purpose.

The sort of case which Section XIII. is intended to meet may be thus exemplified: A married Hindoo man renounces his religion, and becomes subject to the *lex loci*; according to that law he might sue for a restitution of conjugal rights if his wife refused to cohabit with him; but according to Hindoo law the wife would have a right to separate herself from a husband who had become outcast, and, nevertheless, to have her maintenance out of his property.

This right of the husband, and this right of the wife, are inconsistent with each other, and only one of them can prevail. To avoid outrage to the religious feelings of the wife, her right to separate herself ought to prevail. But it is very difficult to foresee all the cases requiring special provision when a man passes from the Hindoo or Mahomedan law to the *lex loci*, and to make such special provision beforehand as shall meet the exigency. A discretion is therefore left to the Court of Appeal in these cases to decide

rding to what may appear to be the merits of each vidual case.

his is a very anomalous provision, but it is a provision nded for a very anomalous state of things.

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om the Honourable Sir LAWRENCE PEEL, Knight, Chief Justice, the Honourable Sir H. W. SETON, Knight, Puisne Judge of the Supreme Court at Calcutta, to the Right Honourable Sir H. HARDINGE, K.C.B., Governor-General of India, in Council, dated 25 March 1845.

Right Honourable and Honourable Sirs,

WE have the honour to acknowledge the receipt of your letter to the Judges of the Supreme Court at this Presidency of the 1st March 1845, requesting their opinion on the provisions of a Draft Act for establishing a *lex loci*, which is now under the consideration of the Legislature of British India.

We think the object of the Act unexceptionable; but some of its provisions appear to us to be open to objection, and others to be inadequate to the attainment of the proposed object.

As the expression "substantive law" has not been hitherto used in Statutes or Acts,—as it is used by the framers of the Act in a sense which all who have adopted it do not give to it,—and as the terms substantive and adjective law are not of themselves indicative of their proposed meaning, we think it desirable that some definition should be given in the Act itself of the meaning of the expression "substantive law." The notes of the Law Commissioners would not be authority to which a court would be bound to defer; but the main defect, as it appears to us, in the enactment by which that which is called "substantive law" is to be introduced, is its want of precision as to the extent to which the law of Eng- is to be introduc haps, a necessary the usu which the laws of a ce into its dependencies, ce must decide on the admis- rts of such laws; such *quasi* urts of justice is, however, an e introduced needlessly. From titution of the courts to which likely to be in entrusted, its exercise would be system of Eng commonly objectionable; the of it is attend is so vast, and the application udges not pre so many difficulties, that to culties in this co trained to its study, the diffi- ince they would have t would be almost insurmountable, hey were unacquainted, and they would not have the assistance of a bar or other profess al agents, or of officers possessing the knowledge in which the judges were deficient; they would therefore be under disadvantages to which no magistrate or body of magistrates administering the English law in England is exposed; and it must be remembered that they would often have to decide cases of difficulty and complexity. It would be a laborious task, but it would not be impracticable, to point out the portion of the common law of England intended to be introduced; and the difficulty would be less as to the Statute law, from the records of it being collected and accessible. It would be of the greatest aid to those who would have to apply its provisions if the Draft Act were accompanied by some digest or authoritative exposition of the law to be introduced.

With respect to the fourth section, we beg further to suggest, that it would be advisable to extend to India some Statutes passed since the 13th George 1st; and that the Statutes to be extended might be named in a Schedule to the Act, and that it would be a favourable opportunity for making this extension to the Presidency towns as well as to other parts of British India.

It appears to us that the fifth clause would introduce much uncertainty. What is the way in which the courts of the East India Company now adjudicate and modify "the legal rights of British subjects?" Is there an uniform rule of decision in such cases observed by all courts the Mofussil? The Law case of Hoo *v.* Peter Marqui Dewanny Adawlut, vol. 4, courts in the Mofussil now subjects the same system of equ tered by English courts of equity to us not to establish that positio abounds with errors; the decision is rized by English equity as by English law. proceeded on the opinion quoted in the case of Advocate-General of that day, it would have been apparent that the Court meant to decide according to rules which they were erroneously informed would have been applied by an English court of equity deciding in the same case; but as that opinion was not pursued, the case cannot be cited to prove that the courts of the East India Company in the Mofussil now apply English equity in any case.

The introduction of the words "good conscience" would be likely to give rise to misconception and error if the object be merely to introduce the system of equity observed in English courts of equity. In equity, or any other system that is governed by precedents and fixed rules, it cannot be said of every claim or defence which a party is permitted to establish, that it is a conscientious one; particular injustice must occasionally result from the observance of general rules, and the lesser evil is tolerated that the graver one of uncertain laws may be avoided.

With respect to the sixth clause, we think that if the distinctions known in English substantive law between real and personal property be not introduced in the Mofussil, they should be abolished throughout India in all cases where they now prevail; otherwise, as the Act would introduce a *lex loci rei sitæ*, lands of the same owner dying intestate would often devolve in one mode in the Mofussil and in another mode within the Presidency towns. We think that there is no sufficient reason for maintaining these distinctions in any part of the country, particularly after the Act called Fergusson's Act has already gone so far in abolishing them; at the same time, it would be proper to consider whether the wife's interest in her landed estate should not be preserved on the same footing as if it were real estate.

The Act is defective, in our opinion, in not stating how the representative on the death of an owner intestate is to be ascertained; as the English law would be introduced, property would devolve on a personal representative, either executor or administrator, and in cases of intestacy, until the appointment of an administrator, it would not be certain in whom the property would vest.

To simplify titles, and facilitate transfers of pr perty, it is essential that representation should b kept up.

It appears to us that the provisions of the twelfth section, relative to forfeitures to be enforced under the sanction of the appellate court, are objectionable.

The inquiry, whether the religious feelings of any party would be outraged by enforcing the provisions of the law, would be one upon which it would be difficult satisfactorily to adjudicate. The party who would be next in succession to the party abandoning his religion would not be slow to assert that it outraged his religious feelings that a change of faith should work no forfeiture. What better means than those which the Court below had would the appellate tribunal possess of forming a judgment on the question of the sincerity of alleged religious scruples? Is such a question fit to be entertained at all?

We beg to offer our aid to the Government and to the Law Commissioners in framing provisions in accordance with our views as to the specification and explanation of the law to be introduced.

We have, &c.

(Signed) LAWRENCE PEEL.
H. W. SETON.

Court House, 25 March 1845.

…CE PEEL, &c. &c. &c.

…bliged to you, in reference to …ay, if you will give me the …n as to what may be expected …orking of the "*Lex Loci*" Act, …st of English law, suited to the …, were prepared and promulgated in …existing Regulation.

…effect of introducing such a digest in the …fussil would be to render the administration of justice more complicated, difficult, and uncertain than it is at present under the Regulation law, such a result would be a most serious and fatal defect in the proposed measure.

On the other hand, assuming that the subject will be less vague and more precise on many important points than the existing Regulations, nevertheless, if the improvement is inevitably to be attended with the risk of our Provincial Courts being overlaid by the technicalities and special pleadings of our Courts in England, that result would be a fatal objection to the improvement sought to be obtained.

But if, on the contrary, the administration of the digest law can be rendered so little liable to this objection on* the existing Regulation law (which I understand will be the case), the fears of those who apprehend that the Mofussil Courts will become the sources of vexatious litigation are groundless.

There are various other considerations connected with the practical working of the proposed law so familiar to you, who have so long and so ably practised in and presided over our Indian Courts of Law, that I should infinitely prefer, if you will permit me, at once to request you to give me your view of what will be the effects (beneficial or otherwise) of the proposed Act, not losing sight of the instruments which we shall have in the provinces to carry such a law into daily operation, and assuming that the people to whom the law is to be applied should remain, as to castes and creeds, much on the same footing as at present.

I assure you, I as well as my colleagues are very thankful for the aid you are at all times so ready to afford.

Believe me, &c.
(Signed) H. HARDINGE.

Calcutta, 15 July 1845.

(True copy.)
(Signed) C. HARDINGE,
Private Secretary.

MY …SIR HENRY.

THE questions which your letter proposes to me I am enabled to answer without delay, because I have previously given the subject a full and anxious consideration. The *Lex Loci* Act, if accompanied by a digest of such parts of the English law as it was deemed expedient to introduce into the Mofussil, would introduce no difficulties, subtleties, or technicalities whatever. It is, in my opinion, indispensable to the success of this experiment that a digest should form a part of it, which might readily be enacted. Sir Henry Seton's and my recommendation of the measure proceeded on this view. I need only refer you, on this point, to our letter to Government. This, Mr. Cameron assured me, would be consented to, but he was desirous that the actual enactment of the Act should not be postponed, although he was willing that its operation should be suspended until after the completion of such a digest. Some misconception appears to prevail in some quarters on this subject.

The law proposed to be introduced is not the w… body of the English law, but a certain written … digested portion thereof, suitable to the condition … those to whom it is to be applied. The subject w… be best explained by showing negatively what wou… not be introduced. The process, the forms of spec… pleading, the rules of evidence, the mode of trial, … process to execution,—none of these would be int… duced. A suit in the Mofussil under the *Lex L…* Act, if enacted, would, for any thing that that la… proposes to the contrary, proceed in precisely th… same course in which any other suit proceeds. Th… mere difference would be, that instead of taking evi… dence as to the law of foreigners of all nations fro… doubtful sources, the judges would look to a written … digest of the law for a rule to govern their decisions … in the cases to which the Act would extend. Th… only part of the English law (using the term "substantive law" as applied by the Law Commissioners) in which any degree of subtlety or technicality is to be found is that of real property, which is certainly an abstruse and difficult branch of the law; that, however, is [not]* to be introduced; and I am quite at a loss to understand how technicality or subtlety can be imputed to the body of the English law which this Act, as I now explain it, would introduce. I am sure that instead of recommending its adoption I should most earnestly have recommended its rejection, if I had thought it open to this objection. I may observe, in addition, that the English law as to contracts, the most fruitful source of litigation, is so much in harmony with the Mahomedan and Hindoo laws as to contracts that it very rarely happens in our courts, which are bound to administer to Hindoos and Mahomedans their respective laws as to contracts, that any question arises on the law peculiar to those people in actions on contra… …ulations make no pro… …visions on the sub… …consider… …ny English law would not … …ed as I have observed, would di… …on all people. Of course the pe… and Mahomedans are to be h… …'s is no rational ground for mai… …y, in other cases. Is a magist… …d likely to have less difficulty in … …e between Frenchmen upon the … …h upon the English digest? Wi… …France, than … laws of Portuguese, Armenia… …w more of the … the laws contained in a plain … …, &c. than o… English law? Without going … …digest of the … English law as some have gon… …in praise of the … I can say, with truth … that I think it an excellent system of laws, and that it should be of inestimable benefit to enact for the general mass of people in the same empire, save those for whom necessity required peculiar laws to be retained, one and the same body of laws. This could not be done by a code enacting a mere body of laws, for it would not do to supersede English law in an … English dependency, closely connected in commercial … relations with the parent state; and a code or a digest … embodying the main principles of the English law … differ only in name. I have, therefore, no hesitation … in saying, that I most fully concur in the general recommendation of the Law Commissioners on this subject, qualified as I have above explained, and that I think the fears of technicalities or subtleties wholly groundless. I should not have thought my opinion … would influence many, but as you think so, it is both … my duty and my wish to give you my assistance in … this as well as in all other matters on which you may do me the favour to consult me.

I have, &c.
(Signed) LAWRENCE PEEL.

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* Sic orig.

* Note.—The sense requires the insertion of the word *not*.

APPENDIX C.

PAPERS relating to the PARSEES of BOMBAY.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 31st March 1860.

MR. LEGEYT said, he held in his hand a document of great interest and importance. It was a Petition from the Parsee community of Bombay to this Council, praying for the enactment of a code of laws by which their right in matters of inheritance and succession, the rights of married women, the rights and relations of parent and child, guardian and ward, might be authoritatively settled.

The petitioners had set forth, at some length, the history of this movement in their tribe. They showed that they had been residents in India since A.D. 727, and although they had adopted the language, and in many respects the habits of the country, they had with much care and jealousy preserved the ancient customs and usages of their own people as handed down to them in their own writings and traditions. Unlike the Hindoos and Mahomedans, these customs had never been passed into a code of laws. The comparatively limited number of the Parsee community and their patriarchal institution of the Punchayet, by which all domestic relations were regulated for many centuries, rendered legislation unnecessary. It was not until the middle of the eighteenth century that any material interruption to this happy state of things appeared to have been experienced. In 1777 an appeal was made to the Government of Bombay to strengthen the power of the Punchayet, which had begun to be disregarded. Partial remedies were afforded, but things seemed to have gone on from bad to worse, and several spasmodic but ineffectual attempts to uphold the Punchayet were made from time to time. In the meanwhile disputes on inheritance, on marriage, and on succession were taken into the Supreme Court and decided, in the absence of any special law, according to the principles of English law. This was objected to by the petitioners. He (Mr. LeGeyt) would read that part of the petition which contained the objection :—

"Your petitioners need hardly suggest to your Honourable Council that the laws which are in force in England, upon the subjects above particularly mentioned, although they are productive of happiness and security to the English people, are but ill adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. The application of English law in such cases has frequently, although in the present state of things unavoidably, been productive of much hardship to individuals, and of great dissatisfaction among the Parsee community in general. Furthermore, it has been decided on the 17th July 1856, by the highest Court of Indian appeal, namely, by the Right Honourable the Judicial Committee of the Privy Council, in England, in the case of Peerozebaie Ardaseer Cursetjee Dady, that in matters affecting marriage and conjugal rights, the Supreme Court in Bombay does not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights, the Parsees are destitute of any remedy whatever which can be legally enforced. The Parsees consequently feel that they, as a race, are debarred from the secure enjoyment of the laws, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be even guaranteed to them in like manner as the laws, usages, and customs of the Mahomedans and Gentoos were recognized as rights to be enjoyed by those races respectively."

The petitioners traced out all that had been done by themselves and by the Government to obtain redress, and that the only successful result of their endeavours had as yet been the passing in 1837 of Act IX. of that year, which declared that the immoveable property of a Parsee dying should be dealt with in the same manner as chattels, and by which all attempt to enforce the English law of primogeniture was defeated.

In 1855 an important meeting of the community was held. He would read from the petition as to what had been done on that occasion :—

"That on the 20th August 1855, a public meeting of the Parsees of Bombay was held, at Sett Cowasjee Byramjee's Fire Temple, which was attended by the heads of the Parsee community, as well as by a great number of respectable and influential gentlemen, at which the following resolutions were unanimously agreed to :—

"That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and Courts of Justice.

"That a managing committee, composed of the following gentlemen, be appointed to prepare a draft of a code of laws adapted to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto, and that the committee be empowered to add to their number and to appoint their secretary. A copy of the minutes of the proceedings of the said meeting is herewith [illegible]

"That your petitioners represent [illegible] committee above referred to, and which consisted the heads of all influential Parsee families, as well other gentlemen representing the different classes of the Parsee community in Bombay.

"That during the period of four years and upwards, which has elapsed since the appointment of your petitioners as members of such committee, your petitioners have been constantly engaged in the performance of the duty entrusted to them by their community."

Again, in paragraph 5, the petitioners state :—

"That by means of such inquiries and researches your petitioners became possessed of sufficient information to enable them to frame the draft of a code of laws on the above-mentioned subjects, applicable to their co-religionists. Each section of such code was fully and patiently discussed at the meetings of the above-mentioned committee, and due publicity was given to all such proceedings by the publication thereof, from time to time, in the Guzeratte newspaper.

"The draft code of laws, applicable under the before-mentioned points to the Parsee community, has now been settled, and is hereunto appended ; and your petitioners humbly pray your Honourable Council to pass the same into law."

He (Mr. LeGeyt) would not take up the time of the Council by reading the whole of the petition and the details which were given to illustrate its prayer. He did not, however, feel that matters were yet sufficiently matured to justify the Council in bringing in a Bill passed in conformity with the prayer. He entirely concurred in the justice and necessity of the measures. But there was a point which should, he thought, require further examination and inquiry. It was very important that, in a movement of this kind, there should be unanimity among the people

who were affected by the proposed law. He would read one more paragraph of the petition :—

"It had been the earnest hope of your petitioners to have been able to propose one uniform code of laws, which should be applicable to Parsees residing in all parts of India, but some of their co-religionists, residing at Surat and elsewhere, resolutely object to allow the widow and daughters to inherit any portion of the property left by an intestate Parsee, deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs; but neither of these objections at all arise from such powers of inheritance and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have in certain matters adopted the usages and customs of the Hindoos, and to them pertinaciously adhere, and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudiced and narrow. The Parsees of Bombay, who, even numerically speaking, far exceed those of the Mofussil, do not admit the validity of the objections just mentioned, and, therefore, following the precedent of the Parsee's Real Property Act, No. IX. of 1837, they have proposed and now solicit your Honourable Council to enact the accompanying code, so as to affect Parsees residing within and subject to the jurisdiction of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honourable Council to extend its provisions to the Parsees of the Mofussil."

It was true the petitioners only demanded legislation for that section of the community who were agreed, and it was also true that that section formed a large majority of the numbers and wealth and intelligence of the tribe; but it was tolerably evident that the chief obstacle to the passing of a law, such as was now prayed for, had hitherto been the want of unanimity of a people who professed to be governed by the same laws and to derive them from the same source. The petitioners declared their researches had convinced them that their usages, and that the laws now asked were in conformity with the ancient usages of their race. Still as there was a difference of opinion, he thought a further inquiry was desirable. The inconvenience of a special law for a Parsee residing within the limits of the Supreme Court of a presidency town differing materially from the law by which a Parsee residing on the other side of the boundary was governed, should be avoided. If it were found that the law asked for were unobjectionable to themselves, and were really in conformity with the ancient usage of the tribe, and the contrary could not be shown by the objectors, and if it be ascertained that the objectors were really the innovators, and had adopted the principles of Hindoo law, then he thought the voice of the majority should be respected, and the law prayed for might be passed under that view of the case. His intention was to move that the petition be printed and referred to a Select Committee, with instructions to institute such inquiries as might be necessary to satisfy them whether the subject was one which required legislation, and whether the legislation proposed by the petitioners, or any other, be the most advisable; and, in order that the inquiry might be effectual, that the committee be authorized to issue commissions for the purpose of taking evidence, and that the Commissioners be authorized to take such evidence in the manner provided by Act VIII. 1859, for the taking of evidence by Commissioners.

He would move that the Select Committee consist of Sir James Outram, Sir Bartle Frere, Sir Charles Jackson, and the mover, with instruction to report within three months from that date.

The motion was put and agreed to.

TO THE HONOURABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble Petition of the undersigned members of the Managing Committee appointed at a public meeting of the Parsee Inhabitants of Bombay, held on the 20th August 1855 at Bombay, to prepare a code of laws adapted to the Parsee nation, and to petition the Legislative Council of India for the enactment of such laws.

SHOWETH,

THAT on the 20th August 1855, a public meeting of the Parsees of Bombay was held at Sett Cowasjee Byramjee's Fire Temple, which was attended by the heads of the Parsee community, as well as by a great number of respectable and influential gentlemen, at which the following resolutions were unanimously agreed to :—

First. "That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and Courts of Justice.

Second. "That a managing committee, composed of the following gentlemen, be appointed to prepare a draft of a code of laws adapted to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto; and that the committee be empowered to add to their number and to appoint their secretary."

A copy of the minutes of the proceedings of the said meeting is hereunto annexed, for the information of your Honourable Council.

2. That your petitioners represent the managing committee above referred to, and which comprises the heads of all the influential Parsee families as well as other gentlemen, representing the different classes of the Parsee community in Bombay.

3. That during the period of four years and upwards, which has elapsed since the appointment of your petitioners as members of such committee, your petitioners have been constantly engaged in the performance of the duty entrusted to them by their community.

4. The subjects to which your petitioners have, for the present, directed their especial attention as needing formal legislation by your Honourable Council for the benefit of the Parsee community, have been,—

First. The Laws of Inheritance, Succession, and Administration.
Second. The rights of Married Women.
Third. The rights and relation between Parent and Child.
Fourth. The rights and relation between Guardian and Ward.

And with a view to carrying out the trust confided to them on these points most fully and effectually, your petitioners have thereon instituted the most searching inquiries, have collected information from the most authentic sources, including the ancient and modern records of the Parsees, and have carefully inquired into and considered the present and past usages of the Parsee communities established in different parts of Western India.

5. That by means of such inquiries and researches your petitioners became possessed of sufficient information to enable them to frame the draft of a code of laws, on the above-mentioned subjects, applicable to their co-religionists. Each section of such code was fully and patiently discussed at the meetings of the before-mentioned committee, and due publicity was given to all such proceedings by the publication thereof from time to time in the Gujerati newspapers.

6. The draft code of laws, applicable upon the before-mentioned points to the Parsee community, has now been settled, and is hereunto appended; and your petitioners humbly pray your Honourable Council to pass the same into law. And your petitioners take

eave to add a brief statement of facts which may serve to show to your Honourable Council,—First, the circumstances through which the preparation of such draft code, and this petition for its being passed into substantive law, have become necessary; and, Secondly, that the present is no novel scheme or arbitrary innovation, but rather the result of the experience of years, and that it is based upon the views and recommendations of some of the most eminent judicial and civil authorities existent in times past in the Presidency of Bombay.

7. The Parsees, when forced to abandon their original country, Persia, by the tyranny and persecution of Mahomedan conquerers, settled in India in the seventh century of the Christian era. Although they have adopted in some degree the language and usages of the natives of India, with whom they have intermingled, they have still ever formed a distinct race, professing the ancient religion of Zoroaster, and observing such social customs, usages, rules, and regulations as have come down from their ancestors to the present generation. In course of time, when India became subject to the constitutional sway of the British power, various Acts of Parliament were passed, affecting the due administration of justice therein, and a pledge was given that all civil causes in which Hindoos and Mahomedans were concerned, should be decided according to Hindoo and Mahomedan law respectively, and that those rights and privileges which those people respectively enjoyed from their ancestors should be secured to them in all English Courts; and this pledge has ever since been confirmed and ratified by the highest authorities in India.

8. That at subsequent periods it was the anxious desire of the advisers of the British Sovereigns to carry out the wise and beneficent principle and assurance just referred to, is evident from the language employed in the charters which at different times established the Supreme Courts of Judicature at the several Presidencies. Those charters direct and ordain that the said Courts shall have full power to hear and determine all suits and actions, "yet, nevertheless, in the cases of *Mahomedans or Gentoos*, "their inheritance and succession to lands, rents, and "goods, and all matters of contract and dealing between party and party shall be determined, in the "case of the Mahomedans by the laws and usages of "the Mahomedans, and where the parties are Gentoos, "by the laws and usages of the Gentoos, or by such "laws and usages as the same would have been determined by if the suit had been brought and the "action commenced in a native Court; and where "one of the parties shall be a Mahomedan or Gentoo, "by the laws and usages of the defendant. And in "all suits so to be determined, the said Court shall "make such rules and orders for the conduct of the "same, and frame such process for the execution of "their judgments as shall be most consonant to the "religion and manners of the said natives, and to "the said laws and usages respectively, and the easy "attainment of the ends of justice."

9. The language of the charter establishing the Supreme Court in Bombay is identical with that used for a similar object in Madras, and although the Parsees in Bombay were at that time a race separate and distinct in religion, customs, and usages from either Mahomedans or Gentoos, no provision applicable to them is contained in the charter, inasmuch as the Bombay charter was copied from that of the Madras Court; and the Parsees were then and are now comparatively unknown or very scanty in numbers in Madras; whereas they have ever since the 7th Christian century been very numerous in Western India; and there are at present nearly one hundred thousand followers of the religion of Zoroaster, as shown by the last census, who are subject to the Supreme Court of Bombay, besides many others professing the same faith who reside in the Mofussil. Under these circumstances, as the laws and usages of the Mahomedans or Gentoos cannot be applied by the Supreme Courts to suits between Parsees, the Judges of the Supreme Court in Bombay have felt themselves bound, in the absence of a fixed and recognized Parsee code of laws regarding inheritance and succession, marriage, divorce, and other analogous matters, to apply the laws of England to all suits which may be instituted before them between members of the Parsee community.

10. Your petitioners need hardly suggest to your Honourable Council that the laws which are in force in England upon the subjects above particularly mentioned, although they are productive of happiness and security to the English people, are but ill-adapted to the wants and requirements of the Parsees, who entirely differ in manners, customs, and usages from those for whose benefit and protection such laws were framed. The application of English law in such cases has frequently, although in the present state of things unavoidably, been productive of much hardship to individuals, and of great dissatisfaction among the Parsee community in general. Furthermore, it has been decided on the 17th July 1856 by the highest Court of Indian appeal, namely, by the Right Honourable the Judicial Committee of the Privy Council in England, in the case of Peerozebaee *versus* Ardaseer Cursetjee Dady, that in matters affecting marriage and conjugal rights, the Supreme Court in Bombay does not possess any power to exercise jurisdiction over your petitioners and their co-religionists, and consequently in all cases relating to marriage, divorce, and the restitution of conjugal rights, the Parsees are destitute of any remedy whatever which can be legally enforced. The Parsees consequently feel that they, as a race, are debarred from the secure enjoyment of the laws, usages, and customs pertaining to them, and which they apprehend it was intended by the Legislature should be ever guaranteed to them, in like manner as the laws, usages, and customs of the Mahomedans and Gentoos were recognized as rights to be enjoyed by those races respectively.

11. Having thus endeavoured to lay before your Honourable Council a concise statement of the causes from which their present application has become a matter of vital necessity to the Parsee community, your petitioners most respectfully take leave to add as brief a statement as possible of the prior efforts at legislation which have been made in respect of these important matters.

12. As early as the year 1827, Harry Borradaile, Esq., the then Registrar of the Sudder Adawlut, and afterwards a member of the Indian Law Commission, addressed by order of the Government of Bombay a Gujerati letter to the heads of the Parsee community, in which he stated that "It is the opinion of Govern-"ment that you should assemble and consult together, "and with your unanimous consent commit these laws "and customs to writing, and after holding mature "deliberation adopt a code of laws for your govern-"ment and guidance. I have, by the order of the "Government, prepared and transmitted to you a "series of questions on the subject of your laws, "which you are desired to take into your serious con-"sideration, and, after deliberating on the subject, "forward explicit answers to them, such as you all "unanimously agree to and approve. All cases, "actions, and suits will be decided by the Govern-"ment functionaries in conformity with the laws "approved, agreed upon, and transmitted by the "unanimous consent of your nation."

13. In confirmation of the very desirable character of the objects pointed out in the above extract, your petitioners beg to quote the language of the Honourable Sir H. Compton, late Chief Justice, and the Honourable Sir J. W. Audry, which occurs in a letter addressed by them to the Bombay Government in the year 1837, in reply to a communication from the Government respecting the then defective state of the law as applicable to the Parsees. "You must "be aware," they say, "that by the charter of the "Supreme Court, we are bound to administer Hindoo "and Mahomedan law in matters of contract and

" inheritence between persons of those classes respec-
" tively, that neither of these laws can be applied to
" Parsee inhabitants of Bombay, and that the English
" is the *only* other law which we are authorized to
" administer. We think it most important that the
" law of succession to property among Parsees should,
" as early as possible, be settled by an Act."

14. While the members of the Parsee community were comparatively few in number and poor in means, they were naturally content to refer the disputes which might arise upon the subjects above referred to, to the Punchayet, or elders of their tribe. But since the time at which the Supreme Court in Bombay was established, as the Parsees increased and progressed in numbers, in commercial transactions, in wealth, and in education, they became from the very force of circumstances more amenable to the Supreme Court, and more liable to be made parties to causes relating to inheritance and to property instituted therein. It was, therefore, in 1838 that the Parsee community of Bombay transmitted through the Government a full series of answers to the questions propounded by Mr. Borradaile in 1827, together with a petition to your Honourable Council praying for an enactment, defining and regulating the rights of inheritance amongst the Parsees. Owing to some reason or difficulty the nature of which has not transpired, your Honourable Council did not then take up this important subject, and so the matter has, up to the present time, remained.

15. The condition of the law relating to Parsees, however, attracted in the year 1843 the attention of the eminent (then) Puisne Justice of Bombay, Sir Erksine Perry, who in a letter dated the 21st August in that year, and addressed to one of your petitioners, Bomanjee Hormusjee, Esquire, says as follows :—

" I have been so fully impressed for some time past
" with the necessity of a legislative enactment for the
" Parsees, that I had determined to draw up a report
" for Government, pointing out what the subjects are
" on which legislation is required, and discussing the
" different provisions which it might be expedient to
" adopt :" and again, " The main object in introducing
" new laws undoubtedly would be to take care that
" the provisions should be satisfactory to the reason,
" the feelings, and (when possible) even to the pre-
" judices of the community."

16. That the legislation for which your petitioners now pray is neither extreme nor unprecedented, will be sufficiently apparent, when the proceedings of your Honourable Council in the year 1837 are recalled to mind, with respect to the English law of primogeniture, which was attempted to be applied to families of the Parsee religion. In the year 1835 a Parsee instituted a suit in the Supreme Court at Bombay, claiming under the English law of primogeniture, the right. as eldest son, to inherit the whole of the landed property left by his father, who had died intestate. This proceeding caused much sensation and apprehension among the Parsees of Bombay, who immediately petitioned the Legislative Council through the Bombay Government, praying for an Act which should debar the eldest son among Parsees from inheriting the whole of an intestate deceased father's real estate. This petition had due weight with your Honourable Council ; and on the 15th May 1837, your Honourable Council passed an Act (No. IX. of 1837) declaring that " all immoveable property
" situate within the jurisdiction of any of the Courts
" established by Her Majesty's charter shall, as re-
" gards the transmission of such property on the
" death and intestacy of any Parsee having a bene-
" ficial interest in the same, or by the last will of any
" such Parsee, be taken to be and to have always been
" of the nature of chattels real, and not of freehold."
By this timely and beneficent interference of your Honourable Council, the apprehended disturbance of ancient laws, usages, and customs, by the introduction and application of an English law of inheritance among the Parsees subject to the jurisdiction of the Supreme Courts of India, was altogether removed.

17. Your petitioners have now stated the grounds upon which they have been put in motion by the rest of the Zoroastrian community in Bombay, and the reasons which have mainly prompted them in drawing up the code of laws now humbly submitted for enactment, and hereunto appended, and they desire to add one or two explanatory observations upon some of the provisions therein contained.

18. Under section XII., a married Parsee woman is empowered to take, hold, and enjoy property to her own separate use, and without the intervention of trustees, and under section I. she is enabled to dispose of the same by will, just as if she were a *feme sole*. These provisions are founded on, and in accordance with the immemorial usages and customs of your petitioners and their co-religionists. The English principle of identity in such matters between husband and wife has never existed among the Parsees ; and the application or rather introduction of it among them by decrees of the Supreme Court, although as before shown, under the existing state of the law inevitable, has been productive of much misery and dissatisfaction. Married women have, in many instances, been impoverished, and in some cases ruined, by their husbands taking from them the property which had been inherited by them, or which had been given them on marriage by their parents to their own and separate use. This power of separate acquisition and enjoyment of property by married women is in fact only analogous to the principle recognized by the Hindoo law with regard to the stridhana or wife's property, and which, under the charters before mentioned is fully protected.

19. Under section III., in cases of intestacy, the distribution of the estate of the male deceased is proposed to be carried out as follows :—

First. To the widow half a share.
Second. To the sons one share each.
Third. To the daughters one quarter share each.

The difference between the scale of distribution thus proposed and that sanctioned by the English law arises, not only from the former being consistent with the immemorial customs as well as the feelings of the Parsees, but also from the fact of the sons in Parsee families being subject to certain duties and obligations. Real and personal property were placed upon the same footing by the Act of 1837, and are alike divisible among female as well as male heirs ; and on the death of a Parsee his sons are considered as heads of the family, and consider themselves under a moral obligation to support the relatives and dependants of that family, to defray the expenses of marriages, of performing funeral and religious ceremonies, and to keep up and maintain the rank position, and respectability of their father's family—duties and liabilities from which the female members of the family are wholly exempt. For this reason Parsee testators invariably bequeath a much larger portion of inheritance to their male than to their female heirs, a fact which is evidenced by the disposition of property contained in the numerous Parsee wills proved and registered in Her Majesty's Supreme Court of Bombay.

20. By section VI., the right of succession is secured to the heirs of any child who shall have died in the lifetime of the intestate. This provision has been inserted as being consonant with the usages and customs of the Parsees, and giving the force of law to what has, amongst them, the sanction of immemorial practice.

21. Your petitioners have already stated that the Right Honourable the Judicial Committee of the Privy Council have decided that in all matters connected with marriage and divorce, and with the restitution of conjugal rights, the Parsees are possessed of no legal remedy whatever ; and to meet this want, it is proposed by section XVIII. of the annexed draft code, that a proper tribunal, to be styled the Parsee Punchayet, consisting of twelve persons to be elected from among and by the Parsees

of Bombay every five years, shall have power to take judicial cognizance of such matters, that the decision of such legally constituted body shall be final, and that the Supreme Court at Bombay shall be empowered to give effect to such decisions as may be expedient. It has been found by experience, that in matters of the nature now particularly under notice, many Parsee families would be utterly unable to meet and sustain the heavy expenses which would be incurred by the institution and prosecution of such suits upon the Ecclesiastical side of the Supreme Court; in the second place there is an almost insurmountable feeling among Parsees against dragging the private quarrels and disturbances in families into public notice. Regarding the advisability of empowering a legally constituted Punchayet to decide cases arising out of the marriage state, the Honorable Sir J. W. Audry, late one of the Judges of the Supreme Court at Bombay, addressed the following observations, in a letter dated 25th April 1837, to one of your petitioners, Bomanjee Hormusjee, Esquire:—"I quite "concur in your wish that the Punchayet may be "placed upon a footing which will enable that body "still to command the respect of your nation, and "that it should be invested with some definite au"thority in Ecclesiastical and Matrimonial questions. "I hope that it will be empowered to decide, in such "modes as the Civil Courts can recognize, the "validity of all marriages celebrated between Par"sees. An enactment that on these points embraced "the usages of Parsees, and should have the force of "law, would, I think, be desirable." It is with a view of carrying this expression of opinion by the eminent Judge just quoted into practice, that section XVIII. of the proposed code has been framed; and having regard to the facts just stated, your petitioners trust that the proposal may be favourably entertained by your Honorable Council; and with regard to the mode of electing the tribunal proposed in section XVIII. of the accompanying code, they are ready to submit to the Bombay Government for their sanction the necessary rules for regulating the same, as well as for the guidance of the proposed body.

22. It had been the earnest hope of your petitioners to have been able to propose one uniform code of laws, which should be applicable to Parsees residing in all parts of India; but some of their co-religionists, residing at Surat and elsewhere, resolutely object to allow the widow and daughters to inherit any portion of the property left by an intestate Parsee deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs; but neither of these objections at all arise from such powers of inheritance and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have, in certain matters, adopted the usages and customs of the Hindoos, and to them pertinaciously adhere; and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudiced and narrow. The Parsees of Bombay, who even numerically speaking far exceed those of the Mofussil, do not admit the validity of the objections just mentioned; and, therefore, following the precedent of the Parsee Real Property Act, No. IX. of 1837, they have proposed and now solicit your Honorable Council to enact the accompanying code so as to affect Parsees residing within and subject to the jurisdictions of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honorable Council to extend its provisions to the Parsees of the Mofussil, should it be deemed expedient.

23. Your petitioners, in submitting the annexed draft code of laws affecting Parsees to the consideration of your Honorable Council, would call in aid to their petition, were it necessary, the language of the Imperial Legislature set forth in the Act of Parliament 3 & 4 Will. IV. c. 85. s. 53., passed upon 28th August 1833 (since continued or re-enacted by the 16 & 17 Vict. c. 95. s. 28.), which, while originally constituting "The Indian Law Commission," declared that it is expedient that, subject "to such "special arrangements as local circumstances may "require, a general system of judicial establishments "and police, to which all persons whatsoever, as "well Europeans as natives, may be subject, should "be established in the said territories at an early "period, and that such laws as may be applicable in "common to all classes of the inhabitants of the said "territories, due regard being had to the rights, "feelings, and peculiar usages of the people, should "be enacted, and that all laws and customs having "the force of law within the same territories should "be ascertained and consolidated, and, as occasion "require, amended;" and furthermore, that to the Commissioners so appointed, it was directed that in their labours due regard should be had to the "distinction of castes, difference of religion, and the "manners and opinions prevailing among different "races and in different parts of the said territories." By the same Act the powers of legislation for the other Presidencies in the matter of such laws and regulations as to the Governors of those Presidencies it may seem expedient to propose, are committed to the Governor-General in Council; and your petitioners respectfully solicit the favorable attention of your Honorable Council to their present application.

24. In conclusion, your petitioners most sincerely trust that nothing contained in the proposed code of laws may appear objectionable to your Honorable Council as in any way tending to militate against public policy, or to interfere with the public interests. Your petitioners, in the preparation of their draft code, have simply sought to obtain the authority of legislative enactment to enforce the observance of the time-honored customs, ancient laws, and immemorial usages of their community. Your petitioners venture to assure your Honorable Council that the peace, the happiness, and the welfare of the Parsee people depend upon their being assured of the safeguard of laws suited to the peculiarities of their tribe and religion; and they humbly trust that the same protection and privilges which have always been secured in express terms to their fellow subjects, Mahomedans and Gentoos, may, in respect to the matters affected by the present code of laws, be also guaranteed by the authority of your Honorable Council to the Parsees. Your petitioners therefore humbly entreat that your Honorable Council will be pleased to pass into law the accompanying draft code, and thereby to secure the property and future welfare of a tribe, who, as a people, yield to none in fidelity and attachment to the British Crown.

And your petitioners, as in duty bound, will ever pray.

ONE HUNDRED AND SEVENTEEN SIGNATURES.

Bombay, 1st March 1860.

DRAFT CODE.

WHEREAS doubts have arisen as to the laws to be administered with regard to the succession and inheritance to the estates of deceased Parsees, and whereas it is expedient that a settled law on the subject should prevail within the respective jurisdictions of Her Majesty's Supreme Courts in India, having reference to, and incorporating as far as is consistent with sound principles of legislation, the usages and customs which hitherto have prevailed among the Parsees: Be it enacted as follows:—

I. That from and after the passing of this Act, every Parsee who shall have attained the age of twenty-one years shall be entitled by will to dispose of any property of which he or she may die possessed, to such person or persons as he or she thinks fit, and that for this purpose a married woman with regard to her own property howsoever acquired shall be treated and considered as a *feme sole*.

II. Such will in order to be valid must be in writing and executed in the manner herein-after men-

tioned, (that is to say) it shall be signed by the testator or testatrix or by some other person in his or her presence, and by his or her direction, and such signature shall be made or acknowledged by the testator or testatrix as the signature to his or her will or codicil, in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator or testatrix, but no form of attestation shall be necessary. And the signature of the testator or testatrix shall be sufficient if affixed at or after or beside or opposite the end of the will, so that it shall be apparent on the face of the will that the testator or testatrix intended to give effect by such his or her signature to the writing signed as his or her will. Any attesting witness to whom a legacy shall be given by such will, shall not therefore be incompetent, but the legacy shall be void.

III. That after the payment of debts, funeral expenses, and just expenses of every sort, the clear residue of the property of every Parsee dying intestate shall be distributed in manner following, (that is to say,) if he be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions :—

To the widow half a share.
To the sons one share each.
To the daughters one-quarter share each.

IV. If the intestate be a female, in the following proportions :—

To her husband one share.
To her sons and daughters half a share each.

V. If the intestate shall die without leaving a widow or widower, the property shall be divided amongst the children in the proportions mentioned in the foregoing sections.

VI. If any child of the intestate shall have died in his or her lifetime, the widow or widower and children, or if there be no widow or widower or children, then the grandchildren of such child, shall take the share to which such child would have been entitled had he or she survived the intestate, subject to the rules and in the proportions specified in the foregoing sections.

VII. If the intestate die leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother if both are living, or either of them if the other is dead, shall take one moiety of the property, and the said intestate's widow or widower shall take the other moiety. Where both father and mother are alive, the mother shall take half the share of the father. Where neither father or mother are alive, the said intestate's relatives on the father's side in the order in the table specified below, shall take the moiety which the father and mother would have taken if alive. The next of kin standing first in the table shall be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that the property shall be so distributed as that each female shall receive half the portion of each male standing in the same degree of propinquity. If there be no relatives on the father's side, the widow or widower shall take the whole.

TABLE.

1. Brothers and sisters, and the children or lineal descendants of all or such of them as shall have predeceased the intestate, shall take in proportion to their father or mother's share respectively.
2. Grandfather and grandmother.
3. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
4. Grandfather's father and mother.
5. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.

VIII. If the intestate dies leaving neither lineal descendants, nor widow or widower, his or her next of kin in the order set forth in the following table shall be entitled to succeed to the whole of his or her property. The next of kin standing first in the table shall always be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that each female shall receive half the portion of each male standing in same degree of propinquity.

1. Father and mother.
2. Brothers and sisters, and the issue or lineal descendants of all or such of them as shall have predeceased the intestate, shall take in proportion to their father or mother's share respectively.
3. Paternal grandfather and paternal grandmother.
4. Children of the paternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
5. Paternal grandfather's father and mother.
6. Paternal grandfather's father's children, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
7. Brothers and sisters by the mother's side, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
8. Maternal grandfather and maternal grandmother.
9. Children of maternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
10. Son's widow.
11. Brother's widow,
12. Paternal grandfather's sons' widows.
13. Maternal grandfather's sons' widows.
14. Husbands of the intestate's deceased daughters.
15. Maternal grandfather's father and mother.
16. Children of the maternal grandfather's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.
17. Paternal grandmother's father and mother.
18. Children of the paternal grandmother's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.

IX. If a person die intestate, letters of administration of the property of the intestate shall be granted to the under-mentioned relatives successively in the following order :—If any of such relatives refuse to take out letters of administration, or if they be not of a legal age or be otherwise disqualified, letters of administration shall be granted to the person standing next in order. And if there shall be no person standing in such a degree of relationship to the intestate, then to such other fit and proper person as to the Court shall seem meet.

If the intestate be a male,—
1. Widow and eldest son jointly. If the eldest son decline or be disqualified, the second son, and so on in succession.

If the intestate be a married female,—
2. Husband.
3. Sons according to seniority.

If there be no widow or widower or sons,—
4. Sons' sons according to their fathers' seniority and their age.
5. Daughters according to their age.
6. Sons' daughters according to their fathers' seniority and their age.

7. Daughters' sons according to their mothers' seniority and their age.
8. Daughters' daughters according to their mother's seniority and their age.
9. Father.
10. Mother.
11. Brothers according to their age.
12. Sisters according to their age.
13. Paternal uncles according to their age.

X. If the testator or testatrix at his or her death has not appointed an executor of his or her last will and testament, or if the person so appointed refuse to act, in either of which cases administration shall be granted to the person mentioned in section IX.; provided always those persons who take the largest interest under the will shall have a preferential right to take out letters of administration.

XI. A Parsee shall be deemed to have attained his or her majority at the age of twenty-one years.

And whereas doubts have arisen as to the rights of married women over property possessed by or given or bequeathed to them before or after their marriage,—

XII. Be it enacted, that all property of whatever kind soever which shall be given, granted, conveyed, or bequeathed to, or which shall in any way be acquired by any woman, whether married or single, shall, unless the same shall be otherwise expressed by the writing, deed, or will granting, conveying, assigning, or bequeathing the same, be and be taken to be her sole and separate property, and she shall have and exercise the same absolute control over the disposal and use thereof notwithstanding any marriage which she may contract, and may enter into any contracts relating to the disposition and use thereof, and give as effectual acquittances and receipts in respect thereto, and sue and be sued in any action or suit in respect thereof touching the same, as if she were a *feme sole*.

XIII. That the husband shall not be held liable for any debt contracted by his wife, unless contracted by his express or implied authority: Provided that nothing herein contained shall be construed to exempt the husband from his liability to provide for his wife suitable maintenance and necessaries if he compel her by his conduct or otherwise to live separate.

And whereas it is desirable to ascertain the law, and define the rights and the relative positions of parent and children and guardian and ward,—

XIV. Be it further enacted, that the father shall be entitled to the custody of his legitimate children and the guardianship of their estates until they attain the age of twenty-one years, provided he be not, by lunacy, difference of religion, or other just cause, disqualified for the due discharge of his duties and the exercise of his rights towards such child. And he may appoint one or more guardians by will duly executed. And upon his death, in the absence of any such appointment, the mother, or in case of her death or disqualification, the other relatives of the child in the order mentioned in section XVII., shall be appointed guardian, and shall possess all the rights and privileges of the father, except as herein-after is provided.

XV. Where any dispute shall arise between the father and mother of any child under the age of six years, the personal custody of the child shall belong to the mother until the child shall have attained its full age of six years.

XVI. Upon the death or disqualification of the father as aforesaid, the mother shall be entitled to the custody and guardianship of the child.

XVII. Upon the death or disqualification as aforesaid of the father and mother and the non-appointment of any testamentary guardian, the under-mentioned surviving relatives, according to the following order, shall be entitled to the custody and guardianship of the person and property of the child, provided they are not, by lunacy, difference of religion, or other just cause, disqualified for so acting:—

1. Grandfather, paternal.
2. Brothers in the order of seniority.
3. Uncles by the father's side in the order of seniority.
4. Grandmother, paternal.
5. Sisters in the order of seniority.
6. Sons of the uncle by the father's side in the order of seniority.
7. Grandfather, maternal.
8. Grandmother, maternal.
9. Uncles by the mother's side in the order of seniority.
10. Father's sisters in the order of seniority.
11. Mother's sisters in the order of seniority.
12. Any other relative or suitable person who may be desirous of being appointed.

XVIII. That no person shall acquire any right of inheritance under any of the foregoing sections where such right is claimed by reason of or under a second marriage contracted in the lifetime of a first wife or husband, unless such first marriage shall have been declared to be dissolved, and a divorce granted after due investigation by a Punchayet of twelve Parsees, to be regularly and properly elected for that purpose every five years by the voice of the Parsee community of the town and island of Bombay, or by a majority of the said Punchayet, for some just cause in that behalf, of which just cause the said Punchayet shall be the sole arbiter.

XIX. Wherever the term "Parsee" or "Parsees" occurs in this Act, it shall mean a person or persons believing in and professing the religion of Zurtosht or Zeroashter.

XX. In construing this Act, the relationship, if not otherwise expressed, is to be traced through the male line only, and brethren of the half-blood by the mother's side are not in any case to be entitled to succeed unless expressly named.

XXI. That this Act is to have effect only as regards Parsees resident within and subject to jurisdiction of Her Majesty's Supreme Courts of Judicature in India.

MINUTES of PROCEEDINGS of a Public Meeting of the Parsee Inhabitants of Bombay, held on the 20th August 1855, at Sett Cowasjee Byramjee's Fire Temple, for the purpose of considering and adopting measures for procuring the enactment of laws adapted to the Parsees.

IN pursuance of advertisements which appeared in all the Guzeratti journals, and hand-bills extensively circulated among the Parsees of Bombay, a public meeting of the members of this community was held on Monday, the 20th instant, at half-past three o'clock p.m., at Sett Cowasjee Byramjee's Fire Temple. There were present, besides the heads of the Parsee community, a great number of the most respectable and influential gentlemen. The whole assemblage numbered upwards of two thousand persons.

On the motion of Framjee Nusserwanjee, Esq., seconded by Bomanjee Hormusjee, Esq.,—

NOWROJEE JAMSETJEE, Esq., was voted into the chair.

The proceedings were opened by the chairman calling on Mr. Nowrojee Furdoonjee to read the advertisement convening the meeting.

Mr. Nowrojee Furdoonjee then read a letter from Sir Jamsetjee Jejeebhoy, Knight, to the address of the chairman, a translation of which is as follows:—

To the Chairman of the Meeting held for the purpose of considering the best means for procuring a legislative enactment for the Zoroastrians.

SIR,

I REGRET very much that in consequence of infirmity and the delicate state of my health, I shall not be able to attend the meeting which has been convened this day.

I would, however, take this opportunity publicly to declare my opinion that the object for which this meeting has been convened, namely, that of soliciting

the Legislative Council of India to pass a suitable enactment for determining and regulating the laws of all Zoroastrians, is excellent and laudable, and I hope through the grace of the Almighty, that all the Zoroastrians who have assembled in meeting this day will be unanimous, and will use their best endeavours to accomplish this good and noble object. Further, I content myself with assuring you all that the resolutions which you may adopt on this subject will command my approbation and sympathy.

Your obedient servant,

20th August 1855. JAMSETJEE JEJEEBHOY.

Mr. Nowrojee Furdoonjee then gave the following explanation of the object of the meeting :—

Gentlemen,—I take leave, at the request of the chairman, to make a few observations regarding the object of convening this meeting.

At the time when India became subject to the beneficent and constitutional sway of the British, the Government gave a pledge and guarantee to the people of this extensive country, that all civil cases in which Hindoos and Mahomedans were concerned would be decided according to Hindoo and Mahomedan law, and that the enjoyment of those rights and privileges which they had possessed from their ancestors would be secured to them in all English Courts. From the time the country came into the hands of the English, about two centuries ago, to the present moment, the British Government have performed their promise; and the customs and usages of the Hindoos and Mahomedans have been respected by them in all matters affecting their civil rights, and in consequence they have been able to enjoy the benefit of such rights. But it is to be regretted that members of the Zoroastrian community who live in this country under the British rule are not in a position to enjoy, in the administration of justice, the same privilege with respect to their ancestral customs and usages. The British authorities and the Courts of Justice have not hitherto recognized any of our laws. It is our bounden duty to endeavour to obviate the evils that from time to time arise from the want of such fixed laws, applicable to our people, as would be recognized and enforced by British authorities and Judges, and from the application of English law in the adjudication of those cases in which Zoroastrians are concerned. It appears from an English pamphlet relating to Parsee laws, published in 1843, that during the years 1836–37 and 1838, most of the leading members of the Parsee community endeavoured to procure such legislative enactments as seemed to them necessary. All cases involving questions of inheritance, conjugal rights, and disputes among the Parsees are decided by the Supreme Court according to English law, and not according to Parsee customs and usages; hence the evils and disadvantages from which we suffer. In 1835 a Parsee filed a suit in the Supreme Court here, claiming as eldest son the whole of the landed property of his father, who died intestate. This step created a great sensation among the Parsees, who petitioned the Legislative Council through the Bombay Government, praying for an Act for the Parsee community for preventing the eldest son from inheriting the whole of his father's freehold estate, and declaring such property to be personal property, divisible among all the heirs of Parsees. The Legislative Council at once acceded to this prayer and in the month of May 1837 an Act was passed to that effect.

Mr. Borradaile, on behalf of the Government, had put several questions to the Parsee community of Surat, regarding their laws of inheritance, but that body not having replied to them, the leading members of the Parsee Punchayet of Bombay published those questions in pamphlet form in the year 1832, and solicited answers from the Parsee community; but this invitation was likewise unsuccessful. In 1836, however, the members of the Parsee Punchayet and other Zoroastrians having framed answers to those questions, submitted them in 1836, through the local Government to the Legislative Council, with a petition praying for an enactment for regulating the laws of inheritance among the Parsees according to their ancestral customs; but owing to several causes, the object was not gained. In 1841, Mr. Borradaile was again applied to, but owing to want of unanimity among our community, and other obstacles, the matter was neglected and allowed to drop. The Judges of the Supreme Court have, at various times, suggested to our countrymen, the Parsees, the propriety and advisability of procuring an enactment on the subject of their laws of inheritance, marriage, and divorce, which enactment would obviate the difficulties now experienced in cases that come up before the Court involving such questions, and would promote peace and happiness, and secure to the Parsees the observance of their ancient customs and usages. Sir Erskine Perry, our late Chief Justice, and well-wisher of the natives, wrote thus to a well-known member of the Parsee community, in 1843 :—"I have been so "fully impressed for some time past with the necessity "of a legislative enactment for the Parsees, that I "have determined to draw up a report for Govern-"ment, pointing out what the subjects are on which "legislation is required, and discussing the different "provisions which it might be expedient to adopt." It is well known to all that this intelligent, experienced, and clever jurist repeatedly expressed his earnest desire and willingness to assist us in procuring laws for our guidance.

Now, it is the duty of the Parsees to make a combined effort, with a view to procure the enactment of laws adapted to the Parsee community, and to make arrangements and adopt such measures as will ensure the fulfilment of their object. Their exertions will not remain unappreciated, and they shall have the proud satisfaction of seeing their labours, though Divine favour, crowned with success. Mr. LeGeyt, our well-wisher, who is conversant with the customs and feelings of the Parsees, and who now fills the honourable post of Member for Bombay of the Legislative Council of India, will, we trust, exert his utmost to obtain for us the enactment of suitable and requisite laws; it is our hope that our local Judges will also assist us in this undertaking. Those of our countrymen who are subject to the jurisdiction of the Supreme Court at Bombay are at present subject to English law, and are debarred from the benefit of their ancestral usages. The ruin with which the Parsees were threatened by that English law which awarded all freehold property to the eldest son, in cases of intestacy, to the exclusion of the other heirs, has been averted by Act IX. of 1836. Nevertheless, the property of a Zoroastrian, who dies without having made a will, is still liable to be divided according to the English law, and it is therefore the duty of all Zoroastrians to provide a proper remedy.

Our people have to suffer much injury and disadvantage, owing to our not possessing a regular code of laws recognized by the authorities; and, furthermore, the Judges experience inconvenience and difficulty in deciding cases relating to the Parsees, and sometimes they are unable to arrive at a satisfactory conclusion; they have, therefore, frequently recommended to the leading members of our tribe the advisability of preparing, after mature deliberation, a draft of laws for enactment by Government. So far back as the year 1828, Mr. Borradaile, Registrar of the Sudder Adawlut, addressed a letter, by order of Government, to Mody Rustomjee Khurshedjee and the Parsee community of Surat, which is of such importance, that I take leave to read to the meeting the first three paragraphs.

"First. It appears from observing your customs and usages since the time of Governor Duncan that you do not possess a regular code of laws to which all the men of your nation pay obedience. In consequence of this a great many disputes arise amongst you to the great detriment of your people.

"Second. It would not have been deemed necessary to ask you to frame a code if you had an ancient book of laws or traditions which the whole of your tribe ac-

cept; but, on inquiry, it appears that amongst your books there is no such work. From mature consideration, and an attentive observance of your present manners and customs, it appears that some of your usages are founded on the laws recorded in your books, while a great many are based on your ancient immemorial customs that prevailed amongst your ancestors, while some of your tribe at present follow no laws and act in any way they please. At present there is no record of your ancient usages. It is therefore the opinion of Government that you should assemble and consult together, and with your unanimous consent commit these laws and customs to writing; and after holding mature deliberations, adopt a code of laws for your government and guidance; otherwise there will be no end to disputes and litigation amongst the body of your nation. I have, by the order of Government, prepared and transmitted to you a series of questions on the subject of your laws, which you are desired to take into your serious consideration, and after deliberating on the subject, forward explicit answers to them, such as you all unanimously agree to and approve.

"Third. After unanimously adopting such laws in the manner aforesaid, should it be thought necessary to amend, alter, erase, or add any clauses therein, you are at liberty to do so with the unanimous consent of all the men of your nation. Government will not object to your so doing. It is therefore advisable that you should desire the welfare and prosperity of your tribe and of your posterity; and after deliberating on this important subject, you should, with one voice, frame answers to the questions herewith forwarded to you for your attentive consideration, and return the same to Government. All cases, actions, and suits will be decided by Government functionaries in conformity to the laws approved, agreed upon, and transmitted by the unanimous consent of your nation."

It is the duty of our countrymen, the Parsees, to adopt the important and salutary recommendation contained in the letter of Mr. Borradaile I have just quoted, to desire the welfare and prosperity of our tribe, to prepare a draft of suitable and appropriate laws, and to adopt measures for the purpose of procuring their enactment from the Legislative Council of India. If such laws are passed, all disputes and differences between members of our community will be decided according to the customs and usages of our ancestors, and not in accordance to English laws and usages. Thus the peace and prosperity of our people will be enhanced, and the rich and the poor will derive the same benefit, namely, that of a fixed and uniform code of laws; all of us will succeed in obtaining substantial justice in conformity to our immemorial usages; and disputes and quarrels which frequently take place amongst us between mother and children, brother and sister, husband and wife, will greatly diminish; and every one will know exactly what his rights are, and act on such knowledge. If the leading and other members of our community unite, co-operate, and zealously exert themselves in the noble cause of procuring a legislative enactment adapted to our nation, this object will, through the grace of God, be accomplished.

The following resolutions were then proposed and *adopted*:—

I. Proposed by Bomanjee Hormusjee, Esquire, seconded by Cursetjee Jamsetjee, Esquire, and carried unanimously.

Resolved, — That this meeting is deeply impressed with the necessity of procuring for the Parsee community the enactment of laws adapted to that tribe, such as may be recognized, obeyed, and enforced by the local authorities and by Courts of Justice.

II. Proposed by Dhunjeebhoy Framjee, Esquire, seconded by Cursetjee Nusserwanjee Camajee, Esquire, and carried unanimously.

Resolved,—That a managing committee, composed of the following gentlemen, be appointed to prepare a draft of a code of laws, adapted to the Parsee nation, to petition the Legislative Council of India for the enactment of such laws, and to manage and conduct all affairs relating thereto, and that the committee be empowered to add to their number, and to appoint their secretary.

MANAGING COMMITTEE.

Sir Jamsetjee Jejeebhoy, Knight,
Nowrojee Jamsetjee Wadiya,
Bomanjee Hormusjee Wadiya,
Cursetjee Jamsetjee,
Framjee Nusserwanjee,
Cursetjee Rustomjee Wadiya,
Ardaseer Cursetjee Dady,
Muncherjee Jamsetjee Wadiya,
Rustomjee Jamsetjee,
Manockjee Nusserwanjee Petty,
Cawasjee Jehangeerjee,
Sorabjee Jamsetjee,
Cursetjee Furdoonjee,
Cursetjee Nusserwanjee Camajee,
Bomanjee Framjee Camajee,
Limjee Manockjee,
Cursetjee Cowasjee,
Byramjee Jejeebhoy,
Dhunjeebhoy Framjee Patel,
Dastoor Muncherjee Eduljee,
Dossabhoy Sorabjee, Moonshee,
Manockjee Dadabhoy,
Jamsetjee Pestonjee,
Heerjeebhoy Hormusjee Sett,
Pestonjee Hormusjee Camajee,
Jamsetjee Cooverjee Insavara,
Byramjee Sorabjee Mehta,
Sorabjee Pestonjee Framjee,
Pestonjee Manockjee,
Sorabjee Shapoorjee,
Cooverjee Rustomjee Mody,
Pestonjee Makabuchana,
Pestonjee Muncherjee Chichgur,
Nowrojee Dorabjee,
Dastoor Byramjee Dorabjee,
Bomanjee Jejeebhoy,
Dastoor Ardaseer Rustomjee,
Dhunjeebhoy Cursetjee Shroff,
Dastoor Eduljee Dorabjee,
Muncherjee Framjee Camajee,
Framjee Bomanjee Shroff,
Dastoor Pestonjee Byramjee,
Eduljee Bomanjee,
Manockjee Jamasjee,
Jehangeerjee Framjee Jussavora,
Sorabjee Jehangeerjee,
Jehangeerjee Framjee Cowasjee,
Nowrojee Cursetjee,
Bomanjee Sorabjee, and
Nowrojee Furdoonjee.

Mr. Byramjee Cursetjee contended that the educated and other classes were not fully represented in the managing committee. He therefore proposed that the following gentlemen be added to the committee:—

Dossabhoy Framjee Camajee,
Pestonjee Nowrojee Pochajee,
Keekhusro Hormusjee,
Cursetjee Dadabhoy Wadiya,
Jehangeerjee Burjorjee,
Murwanjee Hormusjee Mehta,
Jamsetjee Rustomjee Iranee,
Pestonjee Dadabhoy,
Ardaseer Framjee Moos,
Bomanjee Pestonjee,
Pestonjee Ruttonjee Cola,
Framjee Eduljee,
Cowasjee Eduljee,
Sorabjee Merwanjee,
Dossabhoy Framjee Kuraka,
Ardaseer Jamsetjee, and
Cowasjee Shapoorjee.

Mr. Byramjee's proposition was seconded by Mr. Jehangeerjee Burjorjee, who recommended that Mr. Byramjee's name be added to the committee.

Mr. Nowrojee Dorabjee proposed that Manockjee Cursetjee, Esquire, be also elected a member of the committee.

All these propositions being put to the vote were carried unanimously.

III. Proposed by Byramjee Jejeebhoy, Esquire, seconded by Sorabjee Jamsetjee, Esquire, and carried unanimously.

That the trustees of the General Charity Fund of the Parsee community be requested to defray the expenses of employing legal assistance, and of the establishment which may be required by the managing committee, and other contingent charges.

Mr. Cooverjee Rustomjee Mody, in his address, exhorted his countrymen to give to the proposed undertaking all the assistance and co-operation in their power.

Mr. Dossabhoy Framjee expatiated on the advantages of holding public meetings as often as public exigencies and the interest of the community require, with the view of representing to Government the wants and grievances of the people, and promoting their welfare.

IV. Proposed by Framjee Nusserwanjee, Esquire, seconded by Manockjee Nusserwanjee, Esquire, and carried unanimously.

That the thanks of the meeting be voted to the chairman for his able conduct in the chair.

The meeting then separated at about a quarter to five o'clock.

NOWROJEE JAMSETJEE WADIYA, Chairman.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 20th June 1860.

THE clerk also presented a petition from Modee Roostumjee Khorshedjee and others, of Surat, concerning the petition of the Parsees of Bombay, submitting the draft of a code of law for the Parsee community.

Sir Bartle Frere moved that the petition be printed.

Agreed to.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of Modee Roostumjee Khorshedjee and the principal members of the Parsee community of Surat.

HUMBLY SHOWETH,

THAT, we, your petitioners, have learned from the public papers that a petition was presented to your Honorable Board, dated 1st March 1860, from certain Parsees of Bombay, praying for the enactment of a code of laws for the Parsee community in accordance with a draft submitted by them, in relation to which we deem it incumbent on us to inform you of the following circumstances.

Having read the code proposed by the said Parsees of Bombay, we can with truth assure your Honorable Council that the propositions embodied therein are for the most part at variance both with the principles of our sacred religious authorities and with the customs prevailing among the Parsees at large.

Moreover, we deem it a duty, however disagreeable, to protest against the assumption on the part of the Bombay Parsees of the right to petition your Honorable Council for a law of their own dictation for the Parsee community, and we respectfully beg your favorable consideration of the protest against the same which we feel constrained thus to make.

We have only further to add, that some Parsees of Bombay had appointed a committee to frame a law for the Parsees in accordance with their religious principles and customs. But the said committee completely failed in their undertaking, as was seen from a printed pamphlet of a draft code of laws for the Parsee community at large, sent to us, requesting us to state our views on the subject in question, to which we replied on the 19th January 1859, exposing the inconsistency of their position, and also published a pamphlet and circulated it among the Parsees of Bombay and other places, containing a full refutation and exposing the fallacy of the arguments which they had adduced in support of their startling propositions, a copy of which we beg leave to forward to your Honorable Council.

In conclusion, we beg to inform your Honorable Board that we intend to take an early opportunity of still further exposing the unsound views and fallacious reasoning of the Parsees of Bombay, and to solicit the favour of deferring the consideration of the propositions embodied in their pamphlet, and refraining from coming to any resolution on the subject, until your Honorable Body has been put in possession of the views, not only of the Parsees of Surat, but of all other places in the Mofussil who have the misfortune to differ in opinion from their brethren of Bombay.

And your petitioners, as in duty bound, shall ever pray.

Surat, 13th May 1860.

TWENTY-TWO SIGNATURES.

From the CLERK of the LEGISLATIVE COUNCIL of INDIA to the SECRETARY to the GOVERNMENT of INDIA, Home Department, No. 377, dated the 18th May 1860.

SIR,

ON the 31st March last a Select Committee of the Legislative Council was appointed to take into consideration a petition from the Parsees of Bombay, forwarding a draft code of laws adapted to the Parsee community, and to report whether legislation on the subject was necessary, with instructions, if the Committee found further inquiry necessary, to move the Governor-General in Council to obtain from the Bombay Government such further information as was calculated to elucidate the subject.

2. The question being one on which a considerable difference of opinion prevails, the Committee are anxious, before making their report, to have before them in as intelligible a shape as possible an expression of the general feelings and wishes of the Parsee community with respect to the several matters embraced in the draft code, namely succession, inheritance, marriage, and divorce.

3. The Committee are further desirous of obtaining the opinion of the Parsee community on each section of the draft code.

4. I am accordingly directed by the Select Committee to forward the accompanying copies of the petition and its enclosures, and to request that the Honorable the President in Council will be pleased to transmit them to the Government of Bombay with a view to their distribution at all those places in that Presidency where Parsees reside, for the purpose of eliciting the information above indicated.

5. The Committee suggest that a certain time, say two months, be fixed for the reception of replies to the present reference, it being made known at the same time that those Parsees from whom no information is received within that time will be held to have no objections to offer to the proposed code.

I have the honor to be, &c.

M. WYLIE,

Clerk of the Legislative Council.

Office Memorandum, Home Department, No. 1417, dated Fort William, the 1st August 1860.

WITH reference to a letter from the Clerk of the Legislative Council, No. 377, dated the 18th May last, the undersigned has the honor to transmit to Mr. Wylie a letter from the Acting Chief Secretary

to the Government of Bombay, No. 56, dated 20th ultimo.

H. Ulick Browne,
Under-Sec. to the Govt. of India.

From the Acting Chief Secretary to the Government of Bombay to the Under-Secretary to the Government of India, Home Department, No. 56, dated the 20th July 1860.

Sir,

Referring to your letter No. 1088, of the 19th of May last, on the subject of the proposed draft code of laws for the Parsee community, I am directed by the Honorable the Governor in Council to forward, for the consideration of the Government of India, the accompanying copy of a letter from the Acting 1st Assistant Magistrate in charge, Surat, No. 344, of the 28th ultimo, and of its enclosure, being a petition from the Parsees of Surat praying for an extended period of six months to enable them to prepare a statement in opposition to the code referred to.

2. In submitting this communication, I am desired to state that his Excellency would recommend that the period for considering the petition of the Parsees of Bombay and draft code be enlarged, as it is very probable, in addition to the reasons stated by the Parsees of Surat, that translations of the papers will have to be made for the benefit of the Parsees in the Mofussil, an application to that effect having already been received from the Magistrate of Tannah.

3. The subject is one of grave importance to the Parsee community, and two months hardly constitute a sufficient period for the consideration of the draft code.

I have the honor to be, &c.
H. L. Anderson,
Acting Chief Secy. to Govt. of Bombay.

From the Acting 1st Assistant Magistrate in charge, Surat, to the Acting Chief Secretary to the Government of Bombay, No. 344, dated the 28th June 1860.

Sir,

With reference to your letter, No. 2076, dated 13th instant, and accompaniment, forwarding copy of a petition, &c. from the Parsees of Bombay, I have the honor to report that, in accordance with your directions, I explained the purport of the communication to the Parsees of Surat, and invited their opinions on the subject matter of the petition.

2. In reply I have received a petition from them, which I have the honor to forward for the favorable consideration of Government, praying that an extended period of six months may be granted them to prepare a statement in refutation of the proposed code of laws, which meets with their entire disapprobation.

3. The Mody Rustomjee Khursetjee, whose signature stands first on the accompanying petition, claims to be by hereditary descent the chief of the entire Parsee community, and, as far as I can learn, his claims to this position are recognized and acknowledged by the Parsees of Surat, who form a considerable and influential body. They appear to be, if I may so express myself, the Tories of their sect, and are exceedingly jealous of the innovating Parsee liberals of Bombay. While such a want of unanimity prevails, it is manifestly impossible that the proposed code could be presented to the Legislative Council. I am, therefore, respectfully of opinion that the Supreme Government should be solicited to grant the extended period asked for.

I have the honor to be, &c.
H. B. Lindsay,
Acting 1st Assistant Magistrate
in charge, Surat.

From Mody Rustomjee Khursetjee and the Principal Members of the Parsee Community of Surat to the 1st Assistant Magistrate of Surat in charge, dated the 27th June 1860.

Sir,

In acknowledging the receipt of your letter, No. 327, of the 18th instant, accompanied by a draft of a code of laws for the whole of the Parsee community, and inviting our opinion on the subject within a very short period of six weeks, the task being a difficult one, as may be inferred from the number of years (about five years) spent by the Parsees of Bombay on its preparation, we are quite unable to refute the arguments therein contained with conclusive reasonings borrowed from old works on the subject, and to consult the Parsees of Nowsaree, Balsar, and of different places, who must come to Surat to deliberate upon the matter with their co-religionists here.

It is, therefore, our earnest desire that the period allowed be extended to six months, to enable us to make out a draft containing the refutations and the opinions of Parsees living in several other quarters. This extension is now necessary, as, in consequence of the roads being impassable at this season of the year, the district Parsees will not be able to come to Surat until after the close of the rainy weather.

Will you then be good enough to forward this letter to Government, recommending it to request the Legislative Council of India by telegraph to comply with our wishes. By your doing so we shall not be denied the consolation of having done our best to get a set of rules of the most injurious tendency annulled, and the satisfaction of freeing ourselves as well as our posterity from the miseries which are sure to be our lot if the rules proposed be sanctioned.

We have the honor to be, &c.
Mody Rustomjee Khursetjee,
and others.

From the Clerk of the Legislative Council to the Secretary to the Government of Bombay, No. 464, dated the 7th September 1860.

Sir,

With reference to your letter, No. 56 of 1860, dated 20th July 1860, to the Government of India, I am directed by the Select Committee of the Legislative Council on the draft code of laws for the Parsee community, to state that the Committee will not report until six months from the 1st of this month, so as to afford time for the deliberate expression of the sentiments of the whole of that community in India on the subject.

I have the honor to be, &c.
M. Wylie,
Clerk of the Council.

No. 465.

Copy forwarded to the Home Department with reference to Under-Secretary Lord Ulick Browne's Office Memorandum, No. 1417, dated 1st ultimo.

M. Wylie,
Clerk of the Council.

Extract from the Proceedings of the Legislative Council on the 8th September 1860.

Sir Bartle Frere moved, That Mr. Erskine be added to the Select Committee on the petition from the Parsees of Bombay, with the draft of a code of laws adapted to the Parsee community.

Agreed to.

Extract from the Proceedings of the Legislative Council on the 6th April 1861.

The Clerk reported to the Council that he had received a communication from the Home Department, forwarding a communication from the Government of Bombay, and the correspondence received

therewith on the subject of the proposed draft code of laws for the Parsee community.

Mr. Erskine moved, That the communication be referred to the Select Committee on the subject.

Agreed to.

From the CHIEF SECRETARY to the GOVERNMENT OF BOMBAY to the SECRETARY to the GOVERNMENT OF INDIA, Home Department, No. 19, dated the 22nd March 1861.

SIR,

WITH reference to my letter No. 56, dated 20th July last, I am directed by the Honorable the Governor in Council to transmit the accompanying copies of the correspondence, as per annexed list, on the subject of the proposed draft code of laws for the Parsee community.

I have the honor to be, &c.

H. L. ANDERSON,
Chief Secretary to Government of Bombay.

ACCOMPANIMENTS to the LETTER from the CHIEF SECRETARY to the GOVERNMENT OF BOMBAY to the SECRETARY to the GOVERNMENT OF INDIA, Home Department, No. 19, dated 22nd March 1861.

I. Petition to the Legislative Council of India, from Moodee Rustomjee Khoorshedjee and other Members of the Parsee community of Surat, dated 6th August 1860, with enclosures.
II. Translation of a Guzerattee Pamphlet, submitted by the Parsee community of Poona, dated 9th August 1860.
III. Objections of certain of the Parsee community of Ahmedabad to certain clauses of the Draft Code, dated — August 1860, with enclosure.
IV. Translation of a Petition by the Parsees of Broach, to the Legislative Council of India, against the Draft Code, with enclosure.
V. Petition from certain Parsee inhabitants of Surat, to the Magistrate of Surat, dated 11th August 1860.
VI. Petition from certain Parsee inhabitants of Talooka Sunjan in the Tannah Zillah, dated 31st August 1860.
VII. Petition from the Parsee inhabitants of Tannah, dated 20th September 1860.
VIII. Translation of a Petition from the Parsee community of Baroda, to the Legislative Council of India, dated 15th August 1860.
IX. Petition from the Chairman of the Managing Committee of the Parsee Law Association, dated 9th March 1861.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble Petition of Modee Roostumjee Khoorshedjee and other members of the Parsee community of Surat.

RESPECTFULLY SHOWETH,

THAT the Parsees of Bombay forwarded a draft of a code of laws for the Parsee community to your Honorable Council on the 1st March 1860, with a petition that it be passed into a law. This draft was sent to your petitioners by the First Assistant Magistrate in charge at Surat, with his letter dated the 18th June 1860, requesting them to submit their opinion on the merits of the draft within the short period allowed. The draft was examined several times by the principal members of their community, who stated their objections against several sections of the code. Their opinions have been concurred in by their co-religionists of Surat,—rich and poor, who were called together by a formal invitation on 24th July 1860. Your petitioners trust that your Honorable Council will be pleased to take into your consideration the following circumstances, together with their opinion, which they have taken the liberty to set forth herein.

First. Though the Parsee community of Surat is the oldest in India, yet some of the Parsees of Bombay formed a committee about five years ago, and called it the committee for the preparation of a code of laws for the whole of the Parsees. This name your petitioners have not recognized, nor have they delegated to the Parsees of Bombay the power to which they lay claim.

Second. Several of the articles of the proposed code having appeared to the Parsees of Surat and Broach, the most thickly inhabited by Parsees, and the neighbouring cities, inconsistent with their religion, and contrary to their established customs and usages; and the code of laws having been disapproved of, the Parsees of Bombay framed a resolution on 12th January 1859, to which your petitioners humbly request the attention of your Honorable Council.

RESOLUTION, dated 12th January 1859.

"As it appears from the letters of the Parsees of Surat, Broach, and other places in the Mofussil, that they object to the articles concerning the right of succession of the widows and daughters to the property of a person dying intestate, &c., the Parsees of Bombay propose that the draft code be forwarded to the Honorable the Legislative Council of India, and that body be requested to enact it, so as to affect Parsees living within and subject to the jurisdiction of Her Majesty's Supreme Courts in India."

In the face of the above resolution, the Parsees of Bombay have expressed a desire, in paragraph 22nd of their petition of 1st March 1860, to make their code applicable to the Parsees of Surat, &c., and have used words which are as contrary to the rules of politeness as they are untrue.

Third. These Parsees of Bombay state in paragraph 6th of their petition, that the present law is no novel scheme or arbitrary innovation, but rather the result of the experience of years. To this your petitioners beg to reply that in their humble opinion the Bombay Parsees have grievously erred in the matter of several of the articles, while in others they have inserted matter of their own which best suited their fancy. As an instance to the point, your petitioners beg to represent to your Honorable Council that their religion, and their long-established custom, sanction the adoption of a son, in the case of a man dying without a son, from his nearest relations, &c.,—a provision which has been entirely overlooked by them in their draft, in which the right of an adopted son to inheritance is transferred to others, in the respective order of consanguinity to the deceased. Again, the amount distributed among the widow and the daughters in the draft is less than what they are at present entitled to by virtue of the laws administered in Her Majesty's Supreme Court, to whose jurisdiction they are subject, and by whose decisions they are guided in matters pertaining to rights of inheritance, &c. This fact clearly shows that the new proposal is an innovation of their own, and is quite arbitrary.

Fourth. The Parsees of Bombay, in paragraph 9th of their application, state that the whole population of the Parsees of Bombay amount to nearly one hundred thousand. In this calculation they have either committed an error, or have stated what is inconsistent with fact, with a view to show to your Honorable Council that the proposed code has been approved of by such a large number as the above. Your petitioners beg to state in the first place, that the number of Parsees in Bombay is not so large as they have represented. It is even less than that of the Parsees in the Mofussil. Secondly, that the Parsees of Bombay are not the old residents of the place, but have settled there from Surat, Broach, Nowsaree, and the villages in their vicinities, to earn their livelihood. Thirdly, your petitioners are not at all convinced of the fact that the proposed code has met with the approval of the whole of the Zoroastrians of Bombay.

Fifth. The Parsees of Bombay state in paragraph 12 of their petition that, as early as the year 1827, Harry Borrodaile, Esquire, then Registrar of the Sudder Adawlut, and afterwards a member of the Indian Law Commission, addressed, by order of the Government of Bombay, a Goojratee letter to the heads of the Parsee community, and therein proposed several questions, &c. With regard to this communication, your petitioners beg to observe that, as far as your petitioners are informed, it was not

addressed to them, but was directed to the head of the Parsee community of Surat, Modee Roostumjee Khorshetjee, and the Zoroastrian community. This letter is still in their possession. This circumstance incontrovertibly proves the precedence of the Surat Parsees in respect of time, a fact which the Bombay petitioners have wholly ignored. The Bombay Parsees endeavour to show, by a reference to the letter above alluded to, that Mr. Borrodaile communicated with them as the representatives of the whole of the Zoroastrians. This attempt at misrepresentation causes your petitioners much sorrow.

Sixth. Your petitioners would have felt very thankful to their Bombay brethren for the preparation of the draft, and would have willingly joined them, had it been prepared in accordance with the injunctions of their religion and their time-honoured customs and usages, and conjointly with their co-religionists of Surat and other places in the Mofussil; but your petitioners regret to say that some of the articles of the proposed code of laws being in antagonism to their religion and usages, and some being such as are not supported by the authority of their Scriptures, the code cannot but be regarded as most imperfect, and fraught with the greatest dangers to the Parsees, and they are therefore not at all willing to abide by it.

Seventh. Your petitioners beg to forward herewith a Goojratee answer or refutation to the draft prepared within the short period allowed, and signed by 1,077 Parsees of Surat (an English translation of which they trust they will be able to send very shortly), as well as the reply of the Parsee community of Nowsaree, with its English translation, signed by 258 Parsees of that place. To these papers your petitioners request the attention of your Honorable Council.

Eighth. Your petitioners are well aware that it has been the invariable practice of the British Government (may God preserve it for ever) not to interfere in matters connected with the religion and customs of their subjects. Your petitioners having this fact before them, fervently hope that your Honorable Council will not fail to take into your consideration in the present case the religious views, practices, and usages of your petitioners who,

As in duty bound, shall ever pray,

MODEE RUSTOMJEE KHORSHETJEE,
and others.

Surat, the 6th August 1860.

PERSIAN DEPARTMENT, No. 744, dated 29th October 1860.

TRANSLATION of a letter from the Parsee community of Nowsaree to that of Surat, dated 26th July 1860.

From Dustoor (High priest) Kaicobadjee Roostumjee, and Dustoor Cowasjee Nowserwanjee and Desaee Burjorjee Nowrozjee, and Desaee Bomanjee Darabjee, and the whole Parsee community of Nowsaree, to Modeejee Saheb, Rustomjee Khorsedjee, and the Parsee community of Surat, greeting.

WE have received your letter dated the 28th June 1860, in which you inform us that some of the Parsees of Bombay have framed a draft of code of laws, and sent it with their application of 1st March 1860 to the Honorable the Legislative Council of India, to get it passed into law; that you have received a letter from the 1st Assistant Magistrate of the Surat Zillah, dated the 18th June 1860, the object of which is to make known to the Honorable the Legislative Council of India the opinions of the Parsees of the city of Surat, and other Zillahs, on the subject of the draft code, and that you have also been requested therein to consult the Parsee community of Nowsaree on the subject. We have accordingly made ourselves acquainted with the whole of the contents of the Magistrate's letter, of which you have sent us a copy. In reply to your letter we state that we have examined the draft prepared by the Parsees of Bombay, but our community are not willing to abide by it, because the greater part of its provisions is contrary to the usages handed down to us from our ancestors from a remote period, and to the injunctions of our religion. Those persons whose title to inheritance ought to have precedence are thrown in the background, and others occupy their place.

2. It has not been usual with us from a remote period to admit the claims of widows and daughters to inheritance. If, therefore, the Act for admitting them as heirs in violation of this our ancient custom is passed into law, the inevitable consequences will be the ruin of our people and feuds in family circles. This provision, in favour of the rights of daughters and widows to inheritance, is an arbitrary innovation on the part of the Parsees of Bombay. None will be found to say that the custom of making widows and daughters heirs exists among the Parsees, nor will there be found any man who can say that this innovation has the sanction of any of the books of the Zendavesta. It thus clearly appears that this innovation is inconsistent with our old laws and rules, as well as the doctrines of our religion.

3. If a person dies without leaving a son, it is indispensably necessary to adopt one according to our religion. If a brother of the deceased or his nephew (brother's son) be adopted unconditionally, he becomes the heir of the deceased, as his own begotten son; but no mention is made of such an adopted son in the draft code prepared by the Parsees of Bombay. On the contrary, his right is set aside, and the property of deceased declared inheritable by a succession of other persons. A deliberate consideration shows that this provision infringes the injunction of our religion, which requires that a son should be adopted unto a deceased person after his death.

There are several other objections to most of the sections (of the draft), but to refute them all would take up too much space; suffice it therefore to say that our poor community does not consent to, and is unwilling to abide by, the arbitrary and new laws prepared by the Parsees of Bombay.

We therefore beg to request you will have the goodness to forward this our answer or refutation to the Honorable the Legislative Council of India through the Magistrate of Surat.

VENAYEK WASSOODEW,
Oriental Translator to Government.

PERSIAN DEPARTMENT, No. 745, dated the 29th October 1860.

TRANSLATION of the remarks of the Parsees of Surat on the Draft Code prepared by the Bombay Parsee community, dated Surat, 24th July 1860.

THE Honorable the Legislative Council having forwarded to us, through the Magistrate of Surat, the draft code of laws prepared by the Parsee community of Bombay, and called for our opinion, we offer the following remarks:—

I. That from and after the passing of this Act, every Parsee, who shall have attained the age of twenty-one years, shall be entitled by will to dispose of any property of which he or she may die possessed, to such person or persons as he or she thinks fit, and that for this purpose a married woman, with regard to her own property howsoever acquired, shall be treated and considered as a *feme sole*.

I. In section I. both men and women are empowered to make their wills. This is unobjectionable, but only one alteration requires to be made in it, on the ground that, in accordance with our ancient customs, a woman during the lifetime of her husband cannot, without his permission, bequeath to any one by will any ornaments which she may have acquired in the shape of dower from her husband's family. The Parsees of

this Zillah being mostly poor, cannot afford to find ornaments on the occasion of every re-marriage; while without a dower one cannot get a woman in second marriage.

II. Such will, in order to be valid, must be in writing, and executed in the manner herein-after mentioned, (that is to say,) it shall be signed by the testator or testatrix, or by some other person in his or her presence, and by his or her direction, and such signature shall be made or acknowledged by the testator or testatrix as the signature to his or her will or codicil, in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator or testatrix, but no form of attestation shall be necessary. And the signature of the testator or testatrix shall be sufficient, if affixed at, or after, or beside, or opposite, the end of the will, so that it shall be apparent on the face of the will that the testator or testatrix intended to give effect by such his or her signature to the writing signed as his or her will. Any attesting witness, to whom a legacy shall be given by such will, shall not therefore be incompetent, but the legacy shall be void.

II. The second section of this draft is unobjectionable.

III. That after the payments of debts, funeral expenses, and just expenses of every sort, the clear residue of the property of every Parsee dying intestate shall be distributed in manner following, that is to say, if he be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions :—

To the widow herself a share.

To the sons one share each.

To the daughters one-quarter share each.

III. We do not consent to this section, as from time immemorial our daughters and widows have never, according to our customs, been entitled to inherit or share property. We beg to offer below some brief remarks on this point.

1. Daughters are provided for in the lifetime of their father as follows :—If the father be rich, he gives to his daughters some property proportioned to his means during his lifetime. If the father shall not have given any, the brothers, according to their circumstances, make some provision for their sisters and defray their necessary expenses. If the deceased (father) shall not have given his daughters away in marriage, his sons are obliged, according to their means, to defray the expenses of their marriages and other necessary expenditures. This existing custom is not at all bad, for what the daughters obtain, without experiencing any difficulty or incurring any obligations, is sufficient for them.

2. Among us the funeral expenses of a father or mother dying in a state of poverty, as well as the obligation of supporting the parents, devolve on the sons only, and not on the daughters.

3. Among us, daughters live with their husbands, and widows re-marry, and the obligation of performing the necessary religious ceremonies for a deceased person and his ancestors, is entirely imposed on his sons.

4. So long as a widow remains unmarried, she is provided, according to the position and means of her (deceased) husband, with food, clothes, a house to live in, and money to defray all necessary expenses; she also retains in her possession the ornaments which may have been made (for her) by her husband, as well as all other things which may have been presented (to her) by him.

5. According to the injunctions of our religion, it is indispensably necessary when a person dies without a son, though he may have daughters, that a *paluk* (or adopted son) or *dhurumpootr* (or foster son) should be taken as a son. This custom has been established in several cases in the Courts of Law, and the right of heirship has been awarded to adopted sons in preference to the widows and the daughters of the deceased. These decisions have been confirmed by Her Majesty the Queen in Council.

6. From time immemorial, widows and daughters among us have never inherited property. As an instance corroborative of this statement, it may be added that according to the custom prevailing among us from a remote period, sons have been sued in every Zillah for the debts and other obligations of the deceased (father), notwithstanding the existence of his widow and daughters, who are not liable to be sued (in this respect). Decisions have been passed by all the Zillah Courts and the Sudder Adawlut in

accordance with this custom, and they are forthcoming on the records of the respective Courts.

From all these circumstances, it is evident that from ancient times widows and daughters among us have not been held to possess rights of heirship to the estate of the deceased.

7. Widows and daughters, as above shown, are not entitled to inheritance, hence the tables appended to sections VII. and VIII. showing their respective claims and those of the (other) persons mentioned in those two sections have not been properly framed. We therefore beg to subjoin tables in accordance with our religion and usages as regards both men and women, and they should be adopted.

TABLE of the Rights of Men.

(1.) Sons, and if one of them be dead, his son.
(2.) Sons of sons and their lineal (male) descendants.
(3.) Adopted son according to the condition of adoption.
(4.) If the adopted son be of the family, and has been unconditionally adopted, he becomes heir to the deceased. But if any daughters of the deceased be alive, they, or any daughters left by the son of the deceased, are entitled in all to a moiety of the property of the deceased, and the adopted son herein alluded to receives the other share.
(5.) Father.
(6.) Brother.
(7.) Sons of brothers.
(8.) Grandfather (paternal).
(9.) Sons of grandfather (paternal).
(10.) Grandsons or great grandsons of grandfather (paternal).
(11.) Great grandfather (paternal).
(12.) Sons of great grandfather (paternal).

TABLE of the Rights of Women.

(1.) Daughters, and if any one of them be dead, her daughters.
(2.) Grand-daughters (daughter's daughters).
(3.) Sons of daughters.
(4.) Sons.
(5.) Mother.
(6.) Father.
(7.) Sisters.
(8.) Daughters of sisters.
(9.) Sons of sisters.

IV. If the intestate be a female, in the following proportions :—

To her husband one share.

To her sons and daughters one-half share each.

IV. We do not consent to this distribution. If the husband be alive, he is only entitled to the ornaments forming the dower of the wife, but he cannot inherit any other property which she may have possessed beside the dower. The daughters are entitled to it even though there be sons. If the husband be dead, the whole of the property of the woman, including her dower, descends to her daughters.

V. If the intestate shall die without leaving a widow or widower, the property shall be divided amongst the children in the proportions mentioned in the foregoing sections.

V. We do not consent to this section. Our opinion on this point is that children include both the sons and daughters of the deceased. We are therefore obliged to make a distinction, that if the deceased be a male, his daughters cannot, as is shown in the above sections, inherit his property, and that if the deceased be a female, her sons, if there be daughters, cannot inherit her property.

VI. If any child of the intestate shall have died in his or her lifetime, the widow or widower and children, or if there be no widow or widower or children, then the grandchildren of such child, shall take the share to which such child would have been entitled, had he or she survived the intestate, subject the rules and in the proportions specified in the foregoing sections.

VI. This section is not right in our opinion. Our view respecting it is that if the deceased child be a male, his sons, or if they be not in existence, his son's sons, should inherit his estate, as shown in the preceding section. If the deceased child be a female, her daughters, or if they do not exist, her daughter's daughters, should inherit her property.

VII. If the intestate die, leaving a widow or widower, but without leaving any lineal descendants, his or her father and mother if both are living, or either of them if the other is dead, shall take one moiety of the property, and the said intestate's widow or widower shall take the other moiety. Where both father and mother are alive, the mother shall take half the share of the father. When neither father nor mother is alive, the said intestate's relatives on

VII. We do not approve this section; for the effect of sections VII. and VIII. will evidently be to break the link of lineal descent among Parsees, which is wholly inconsistent with our usages and religion, inasmuch as if any one among us has left no son, it is absolutely necessary to adopt one after his death. This has been established in the Courts of Law, as stated in section III. Again, the order of succession laid down in the draft code is not just, and therefore

the father's side, in the order in the table specified below, shall take the moiety which the father and mother would have taken if alive. The next of kin standing first in the table shall be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that the property shall be so distributed, so that each female shall receive half the portion of each male, standing in the same degree of propinquity. If there be no relatives on the father's side, the widow or widower shall take the whole.

TABLE.

1. Brothers and sisters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
2. Grandfather and grandmother.
3. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
4. Grandfather's father and mother.
5. Grandfather's sons and daughters, and the children or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.

VIII. If the intestate die, leaving neither lineal descendants nor widow nor widower, his or her next of kin, in the order set forth in the following table, shall be entitled to succeed to the whole of his or her property. The next of kin standing first in the table shall always be preferred to those standing second, the second to the third, and so on in succession, subject to the condition that each female shall receive half the portion of each male standing in the same degree of propinquity.

it should be set aside, and the right of inheritance should be regulated by the order of succession embodied by us in the said section III., both as regards men and women.

VIII. A reply to this section is embodied in that of the preceding section VII.

TABLE.

1. Father and mother.
2. Brothers and sisters, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father's or mother's share respectively.
3. Paternal grandfather and paternal grandmother.
4. Children of the paternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
5. Paternal grandfather's father and mother.
6. Paternal grandfather's father's children, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
7. Brothers and sisters by the mother's side, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
8. Maternal grandfather and maternal grandmother.
9. Children of the maternal grandfather, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
10. Son's widow.
11. Brother's widow.
12. Paternal grandfather's sons widows.
13. Maternal grandfather's sons widows.
14. Husbands of the intestate's deceased daughters.
15. Maternal grandfather's father and mother.
16. Children of the maternal grandfather's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father or mother's share respectively.
17. Paternal grandmother's father and mother.

18. Children of the paternal grandmother's father, and the issue or lineal descendants of all or such of them as shall have pre-deceased the intestate, shall take in proportion to their father and mother's share respectively.

IX. If a person die intestate, letters of administration of the property of the intestate shall be granted to the under-mentioned relatives successively in the following order. If any of such relatives refuse to take out letters of administration, or if they be not of a legal age, or be otherwise disqualified, letters of administration shall be granted to the person standing next in order, and if there shall be no person standing in such a degree of relationship to the intestate, then to such other fit and proper person as to the Court shall seem meet.

If the intestate be a male,—

1. Widow and eldest son jointly. If the eldest son decline, or be disqualified, the second son, and so on in succession.

If the intestate be a married female,—

2. Husband.

3. Sons according to seniority.

If there be no widow or widower or sons,—

4. Son's sons according to their father's seniority, and their age.

5. Daughters according to their age.

6. Son's daughters according to their father's seniority, and their age.

7. Daughter's sons according to their mother's seniority, and their age.

8. Daughter's daughters ditto.

9. Father.

10. Mother.

11. Brothers according to their age.

12. Sisters ditto do. do.

13. Paternal uncles do. do.

X. If a testator or testatrix, at his or her death, has not appointed an executor of his or her last will and testament, or if the person so appointed refuse to act, in either of these cases administration shall be granted to the persons mentioned in section IX.; provided always those persons who take the largest interest under the will shall have a preferential right to take out letters of administration.

XI. A Parsee shall be deemed to have attained his or her majority at the age of twenty-one years.

XII. Be it enacted, that all property of whatever kind which shall be given, granted, conveyed, or bequeathed to, or shall in any way be acquired by any woman, whether married or single, shall, unless the same shall be otherwise expressed by the writing, deed, or will granting, conveying, assigning, or bequeathing the same, be and be taken to be her sole and separate property, and she shall have and exercise the same absolute control over the disposal and use thereof, notwithstanding any marriage which she may contract, and may enter into any contracts relating to the disposition and use thereof, and give as effectual acquittances and receipts in respect thereto, and sue and be sued in any action or suit in respect thereof touching the same, as if she were a *feme sole*.

XIII. That a husband shall not be held liable for any debt contracted by his wife, unless contracted by his express or implied authority; provided that nothing herein contained shall be construed to exempt the husband from his liability to provide for his wife suitable maintenance and necessaries, if he compel her by his conduct or otherwise to live separate.

And whereas it is desirable to ascertain the law and define the rights and the relative positions of parent and children and guardian and ward,—

XIV. Be it further enacted, that the father shall be entitled to the custody of his legitimate children, and the guardianship of their estates, until they attain

IX. We are not willing to abide this section.

1. In clause 1 the widow is associated with the eldest son, but it is not customary among us to give letters of administration of the property of the deceased to his widow when there is a son of competent age in existence, nor is it just to do so. In general women are weak-minded, and therefore they cannot be allowed to interfere in such affairs while the sons are in existence.

If the sons be of proper age, the eldest of them may administer to the estate with the concurrence of the others, and in the absence of unanimity, those who are of proper age can take the administration into their hands on their own behalf and as guardians of their minor brothers. But if the brothers of proper age injure the rights of their minor brothers, the widow is empowered to dispossess the former of the management of the affairs of the minors, and take the same into her own hands.

2. In clause 2 the words "husband of the deceased" are properly used.

3. In clause 3 the words "sons of the deceased according to seniority" are properly used.

4. In clause 4 the words "son's sons" are properly used; but after "daughters" in clause 5, "son's daughters" in clause 6, "daughter's sons" in clause 7, "daughter's daughters" in clause 8, the insertion of the father's right as ninth in the order of succession is not proper. We have therefore framed an amended table of succession as follows:—

(1.) Sons of the deceased.
(2.) Sons of sons.
(3.) Father.
(4.) Brothers.
(5.) Sons of brothers.
(6.) Sons of the sons of brothers.

X. Section X. is objectionable, but the order of succession shown therein is not right. That shown in our reply to section IX. is a proper one.

XI. Section XI. of the draft code is unobjectionable.

XII. A reply to section XII. of the draft code is given at length in section I. Therefore we object to this section (XII.)

XIII. The only amendment to be made in this section is, that a written authority on the part of the husband is necessary to constitute permission for his wife to contract debts. If the husband has kept his wife separate from him, as regards her support, she can claim from him an allowance for her food and clothing, but her creditors can have no claim on him. If, however, the wife live separately from her husband of her own accord, she cannot demand her maintenance money from him.

XIV. Section XIV. of the draft code is unobjectionable.

the age of twenty-one years, provided he be not, by lunacy, difference of religion, or other just cause, disqualified for the due discharge of his duties, and the exercise of his rights towards such child. And he may appoint one or more guardians by will duly executed; and upon his death, in the absence of any such appointment, the mother, or in case of her death or disqualification, the other relatives of the child, in the order mentioned in section XVII., shall be appointed guardian, and shall possess all the rights and privileges of the father, except as herein-after is provided.

XV. Where any dispute shall arise between the father and mother of any child under the age of six years, the personal custody of the child shall belong to the mother until the child shall have attained its full age of six years.

XV. The only objection to this section is that, if the mother of a child be converted to another religion, and if the father on this account claim guardianship over his child under six years of age, he ought to have the power of doing so. In like manner if the father be converted to another religion while the child is between six years and the legal age, he forfeits his right of guardianship over the child, and the right devolves on the mother. If both father and mother apostatize and adopt another religion, the relations, in the order shown in section XVII., shall exercise the power of guardianship over the child.

XVI. Upon the death or disqualification of the father as aforesaid, the mother shall be entitled to the custody and guardianship of the child.

XVI. Section XVI. is unobjectionable.

XVII. Upon the death or disqualification as aforesaid of the father and mother, and the non-appointment of any testamentary guardian, the under-mentioned surviving relatives, according to the following order, shall be entitled to the custody and guardianship of the person and property of the child, provided they are not, by lunacy, difference of religion, or other just cause, disqualified for so acting.

1. Grandfather, paternal.
2. Brothers in the order of seniority.
3. Uncles by the father's side in the order of seniority.
4. Grandmother, paternal.
5. Sisters in the order of seniority.
6. Sons of the uncle by the father's side in the order of seniority.
7. Grandfather, maternal.
8. Grandmother, maternal.
9. Uncles by the mother's side in the order of seniority.
10. Father's sisters in the order of seniority.
11. Mother's sisters in the order of seniority.
12. Any other relative or suitable person who may be desirous of being appointed.

XVII. Section XVII. is unobjectionable.

XVIII. That no person shall acquire any right of inheritance under any of the foregoing sections where such right is claimed by reason of or under a second marriage contracted in the lifetime of a first wife or husband, unless such first marriage shall have been declared to be dissolved, and a divorce granted after due investigation by a Punchayet of twelve Parsees, to be regularly and properly elected for that purpose every five years by the voice of the Parsee community of the town and island of Bombay, or by a majority of the said Punchayet, for some just cause in that behalf, of which just cause the said Punchayet shall be the sole arbiter.

XVIII. The power of the committee nominated by the Parsees of Bombay cannot in any way extend to the Parsee community of this place, on the contrary, the power of the Surat Parsees extends over those of Bombay, because a large number of the ancient families of this place emigrated to Bombay, and settled there. We, therefore, object to this section.

XIX. Wherever the term "Parsee" or "Parsees" occurs in this Act, it shall mean a person or persons believing in and professing the religion of Zurtosht or Zoroaster.

XIX. Section XIX. of the draft code is unobjectionable.

XX. In construing this Act, the relationship, if not otherwise expressed, is to be traced through the male line only, and brethren of the half-blood by the mother's side are not in any case to be entitled to succeed unless expressly named.

XX. Section XX. of the draft code is unobjectionable.

XXI. That this Act is to have effect only as regards Parsees resident within and subject to the jurisdictions of Her Majesty's Supreme Courts of Judicature in India.

XXI. Section XXI. of the draft code is not applicable to us.

Even if the jurisdiction of the Supreme Court be hereafter extended to this Zillah, we shall refuse to recognize the draft code on account of the objections shown above.

VENAYEK WASSOODEW,
Oriental Translator to Govt.

PERSIAN DEPARTMENT, No. 742, dated 29th October 1860.

TRANSLATION of a Guzerathee Pamphlet submitted by the Parsee community of Poona, dated the 9th, and received and ordered to be translated on the 17th August 1860.

A PAMPHLET presented to the Magistrate of Poona on behalf of the Parsee community of that place, in consequence of a notice issued by that officer inviting remarks on a draft Act prepared by the Parsee community of Bombay, and submitted to the Government of Calcutta for the purpose of being passed (into law), and containing suggestions for the modification of some of its sections.

The committee constituted in Bombay for the purpose of getting laws passed for the Parsee community having submitted a draft Act respecting inheritance, and other matters connected therewith, for the purpose of getting it authoritatively passed by the Legislative Council of India, the Magistrate of the Poona Zillah issued a notification on the 20th June 1860, stating that Government desired to know the wishes and opinions of the Parsee community of this place in respect of it, and inviting suggestions for any modifications and alterations in the aforesaid (draft) Act. The undersigned Parsees therefore beg, with due regard to the doctrines of the religion and the secular usages of the ancients which have been observed from olden times, to make the following representation, premising that we, the Parsee community of Poona, should not wish to offer any opposition to the draft Act which has been prepared by the Bombay committee at the cost of much pains and labour, as Government is at liberty to render applicable to the community of Bombay the laws framed (proposed) by themselves, but the requisition of Government makes it incumbent upon us to submit the following remarks on such parts of some of the sections of those laws as are prejudicial to the interests of the Poona community.

In the 1st section it is provided,—

" That from and after the passing of this Act every Parsee, male or female, who shall have attained the age of twenty-one years, shall be entitled to give or cause to be given away by will any property of which he or she may die possessed, to such person or persons as he or she may think fit, and that for this purpose a married woman with regard to her own property, however acquired, shall be considered as a *feme sole*."

The power which the foregoing section gives to a man to make a will is proper, but the similar power which it gives to a woman is not proper; for according to the doctrines of the religion, a woman cannot make a will according to her own pleasure, while her husband being (legally) competent is alive, except with his consent; but if the husband is labouring under (legal) disability, or is dead, such woman can make her will without prejudice to the rights of her lawful heirs.

In section III., it is provided,—

" That after the payment of debts, funeral expenses, and other just expenses of every kind, the residue of the property of a Parsee dying intestate shall be divided in the following manner, that is to say, if the deceased be a male, his property shall be divided into such number of shares as shall admit of its distribution in the following proportions:—

" To the widow of the deceased one half a share; to the sons one share each; to the daughters one-quarter share each."

The provision contained in the above section is proper. As to the share awarded to the daughter, it is proper according to religious injunctions, but according to secular customs and usages it appears to be highly objectionable. Since the immigration of the Parsees to India, about twelve hundred years ago, our early ancestors looked upon daughters as their offspring, and, in the first instance (during the lifetime of the parents?) discharged their rights according to their (the parent's) means and ability; and the same usage and practice have prevailed up to the present day. The object in not withholding a daughter's share until after the death of the parent has been believed to provide against the possibility of her husband, that is to say, the son-in-law of the deceased person, by reason of her having fallen into his hands, offering annoyance or molestation in any manner whatever to the deceased's son or sons who are the rightful heirs, and carry on the personality of their father; or injuring or tampering with his (the deceased's) property, or doing harm to the good character of the deceased, or thwarting the desire of the rightful heirs to perpetuate the name of the deceased. For these reasons, the share of a daughter is given and discharged during the lifetime (of the father). It is therefore not proper to admit a daughter's right to inherit a share of her deceased father's estate; but if a daughter or daughters of a deceased person be unmarried, the heirs of the deceased are bound to give her or them away in marriage, and during her or their childhood, maintain her or them, and provide for her or their wants in every respect according to the customs of the world.

Section IV. provides,—

" That if a female dies intestate, her property shall be divided in the following proportions:—

" To the husband of the deceased one-half share.*

" To the sons and daughters of the deceased one-half share each."

The only objection to which the above section appears to be open is, as shown in (the remarks on) section I., that as long as the husband of a deceased female is alive, he is the sole proprietor, but if the husband shall have been dead, the division provided for in the foregoing section is good.

Section V. provides that,—

" If an intestate person shall die without leaving a widow or a widower, the property of such deceased shall be divided amongst the children in the proportions mentioned in the foregoing sections."

With reference to the above section (we are of opinion that) the division contemplated in (the remarks on) sections III. and IV. is good.

Section VI. provides that,—

" If any child of a male or a female dying intestate " shall have died in his or her lifetime, the widow or " widower, or children, shall take the share to which " such child would have been entitled had he or she " survived the intestate, and if there be no widow or " widower, or children, then the grandchildren of " such child shall take the share of such child, subject " to the rules and in the proportions specified in the " foregoing sections." (The above is a literal translation of the section as it appears in the pamphlet in Guzerathee; but the following is evidently the intent of it.) If any child of a male or a female dying intestate shall have died in his or her lifetime, the widow or widower, or children, or if there be no widow or widower, or children, then the grandchildren of such child shall take the share to which such child would have been entitled had he or she survived the intestate, subject to the rules, and in the proportions specified in the foregoing sections. (The above is in accordance with the translation contained in the pamphlet prepared by the managing committee.)

The only objection to the foregoing section is this, the share prescribed for the widow of a son should not be given to her if she re-marries. In like manner, if a daughter dies, the share (obtained by her) should not be given to her widower, but if she leaves any children, and they come within the scope of sections III. and IV., her share will probably devolve on them.

Section VII. provides that,—

" If a male or a female dies intestate without leaving any lineal descendants, but leaving a widow or widower, his or her father and mother, if both are alive, or the survivor of the two, shall take one moiety of his or her property, and the widow or widower of the deceased shall take the other moiety. Where both father and mother are alive, the mother shall

* Mistake for one share.

take half the share of the father; where neither the father nor the mother of the deceased is alive, the share which would have been taken by them (if alive) shall be taken by the relatives of the deceased on the father's side in the order specified in the subjoined table. The next of kin standing first in the table shall be preferred to those standing second, the second to the third, and so on in succession, subject to the provision that where relatives of the same degree of propinquity consist of males and females, the property shall be divided, so that the latter shall receive half the share of the former. If there be no relatives on the father's side, the widow or widower of the deceased shall take the whole property of the deceased."

TABLE.

" 1st Degree.—Brothers and sisters, and the children or lineal descendants of such of them as may have died during the lifetime of the deceased, or those of all of them if so pre-deceased, shall take the share of the deceased brothers or sisters, in proportion to their father's or mother's share respectively."

" 2nd Degree. — Grandfather and grandmother (paternal)."

" 3rd Degree.—Grandfather's sons and daughters, and the children or lineal descendants of such of them as may have died during the lifetime of the deceased, or those of all of them if so pre-deceased, shall take the share of the deceased sons and daughters in proportion to their father's or mother's share respectively."

" 4th Degree.—Grandfather's father and mother."

" 5th Degree.—Grandfather's father's sons and daughters, and the children or lineal descendants of such of them as may have died before the deceased, or those of all of them if so pre-deceased, shall take the share of the deceased sons or daughters in proportion to their father's or mother's share respectively."

The shares contemplated in the foregoing section appear to be improper. When a man dies, his son or sons become his heirs, and if there be none such, it is proper to take a proper person as an adopted son, according to the doctrines of the religion. The adopted son must be a fit person. (It is necessary that the adoption should be made from among the members of the same family, and in the absence of any such, a stranger, if adopted according to the doctrines of religion, is also held a proper heir.) Such adopted son becomes the heir, and it is proper that he should get his share, the widow of the deceased taking her's according to the provisions of sections III. and IV. When a female dies, her husband is, of course, her heir (or proprietor of her estate) according to the religious laws and practice.

The remarks which we have made on section VII. are justly applicable to the provisions of section VIII.

Section XV. provides that,—

" Where any disputes shall arise between the father and the mother of any child under the age of six years, as to the personal custody of such child, the mother shall have the right of keeping such child in her custody until it shall have attained the full age of six years."

This section properly gives the mother the power to keep her child (in her custody), but she has no power at all in respect of the betrothal or marriage of the child, that power belonging to the father; but if the father be (legally) incompetent, or shall have become an apostate, it shall devolve on the next of kin, being a competent person.

Section XVIII. provides that,—

" No person, male or female, shall acquire any right of inheritance by virtue of any of the foregoing sections, where such right is claimed by reason of a second marriage contracted in the lifetime of the first wife or husband, unless the first marriage shall have been declared to be dissolved, and a divorce granted after due investigation by a Punchayet of twelve Parsees, to be hereafter properly and regularly elected every five years by the voice of the Parsee community of the town and island of Bombay, or by a majority of the said Punchayet, for some just cause, of which the said Punchayet shall be the sole arbiter."

The foregoing section is all right, but the right of arbitrating in matters of the above-mentioned description properly belongs to the Parsee community of the place where they shall have arisen, as for instance, if the matter shall have arisen in Poona, the elders of the Poona community have the right (of arbitrating on it), and the community of Bombay should not have any authority or voice whatever in matters affecting us, the Poona community.

Section XXI. provides that,—

" This Act is to have effect only as regards Parsees resident within and subject to the jurisdictions of Her Majesty's Supreme Courts of Judicature in India."

The above section is all right, but should the law administered in Her Majesty's Supreme Court of Judicature be ever made applicable to the Parsees residing in our, that is to say, the Poona Zillah, all those sections from the beginning to the end of the draft Act prepared by the Parsee community of Bombay, to which we have objected as above, are to be considered as not meeting with the approval of us the undersigned Parsee community of the city and cantonment of Poona.

The remaining sections which have not been objected to, are all right.

VENAYEK WASSOODEW,
Oriental Translator to Government.

OBJECTIONS of certain of the Parsee community of Ahmedabad to certain clauses of a draft code drawn up by the Parsee community of Bombay.

AGREEABLY to the Memorandum No. 562 of 1860, dated 21st June 1860, of the 1st Assistant Magistrate in charge, to Muncherjee Sorabjee, the head of the Parsee community in Ahmedabad, accompanied with a letter No. 2077, dated 13th June 1860, of H. L. Anderson, Esq., Secretary to Government of Bombay, and a letter No. 1088, dated 19th May 1860, of Lord H. Ulick Brown, Under Secretary to the Government of India, a meeting of the Parsees in Ahmedabad was called on the 15th July 1860, in the Fire Temple.

On the opinion of the members of this assembly being solicited, concerning a petition and a draft code relating to matters of inheritance, succession, &c., submitted by the Parsees of Bombay, a great number negatived the following clauses, their reasons being set forth below :—

Clause 1. That it is not proper that any man or woman, putting aside his or her true heir without cause, should be allowed to make a will in favour of a stranger.

Clause 2. We do not object to the form pointed out for drawing up wills, but it must not be understood that in this we consent to give the power of making a will in the manner laid down in clause 1.

Clause 3. At present after the death of her husband a woman receives maintenance. This is sufficient. There is no advantage to be gained by making her a sharer by inheritance in the property of her husband, and there is no necessity why she should receive such share. We have given it as our opinion on the 1st clause that no person should be permitted to will away property to any other than the true heir, and therefore there would be no advantage in giving her a share by inheritance, because in the end her share would go to her heirs. Therefore the ancient custom of giving maintenance to the widow is enough. The reasons why daughters should not be allowed to inherit is that, if according to this section they were allowed to inherit, endless quarrels would ensue. But if the father and mother in their lifetime (as is at present the case) choose to give their daughters anything, that of course is proper enough.

Clause 4. The jewels which any woman may possess are, generally speaking, the property of her husband, and she is supported by him, or her sons. In case of the demise of the former she should be supported by the latter. Again, as we have settled that daughters are not to inherit a share of the father's

estate, in like manner they should be shut out from inheriting shares of the mother's property. The property of a deceased wife should not go to any one but her husband, because on the death of the husband it must eventually reach the sons.

Clause 5. This clause has reference to clauses 3 and 4, and we have negatived them. Therefore, the property should only descend to the sons.

Clause 6. We have settled above that daughters cannot inherit, and, therefore, if a daughter die during the lifetime of her parents, how can her husband claim a share which was not due to her ?

As we have stated as our opinion that widows should not inherit, therefore, if a son die before his parents, his widow cannot of course claim a share in her father-in-law's property, but is only entitled to her own maintenance.

Clause 7. As we have agreed that females cannot inherit, consequently if a man die without male issue, his father, or in default of him his nearest male relatives, should inherit his property, females being only entitled to receive maintenance. This is right and proper, and we have stated previously that if a woman die during her husband's lifetime, he is her heir.

Clause 8. If a woman's husband die without male children, the duty of supporting her falls upon the husband's parents and brothers, and this being the case, her property should go to them also.

If a man die without male issue his estate should go to his parents, or in default to his brothers, or if there be none, his nearest relative should take it.

Clause 9. We agree to this clause only on the understanding that, if the person inheriting property be incapable of keeping possession of that estate, we have no objection to proceeding as laid down in this section till such time as the said person becomes capable of so doing.

Clause 12. We agree to this clause, with the stipulation that we object to the following part of it, namely, that a woman putting aside her husband or her rightful heir, should will away her property to whomsoever she please.

Clause 15. We agree to this, provided that the woman be not incapacitated by lunacy or difference of creed, as laid down in clause 14 ; with this condition there is no objection to her taking charge of the child till it is six years old.

Clause 18. According to the rule laid down in this clause for constituting a Punchayet (in Bombay), a Punchayet of 12 Parsees should be appointed by the Parsee community of each zillah to meet in the principal place in the zillah, and these should have all the authority of a Punchayet.

It should not have the authority to grant a divorce on any ground other than the following:—

As a man cannot obtain a divorce from his wife unless her misconduct is proved, or she is physically incompetent, so also if a man be impotent his wife can obtain a divorce throughout the Punchayet. If a divorce is obtained on either of the above-mentioned reasons, the claim of the man or woman thus divorced on the property of the other should not hold.

A man or woman cannot re-marry, his or her first wife or husband being alive, without obtaining a divorce. If for either of the above-stated causes a married couple obtain a divorce, the husband or wife can form a matrimonial alliance subsequently with any other woman or man ; and in case of such marriage, the rules of inheritance of property and rights and claims of all kinds should hold good equally as in the case of a first marriage.

We agree to clauses 10, 13, 14, 16, 17, 19, & 20 of the draft code submitted for our opinion.

(True translation.)
T. M. MASON, 3rd Assistant Magistrate.
(True translation.)
A. ROGERS, Collector.
Ahmedabad, August 1860.

STATEMENT of the names of the Parsees assembled at their Fire Temple on the 15th July 1860, for the purpose of giving their opinions on the Draft Code submitted by the Parsees of Bombay to the Legislative Council.

The Meeting lasted from ½ past 10 A.M. till 6 P.M.

NAMES.	Sections of the Code discussed and opinion recorded.																	
	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th	16th	17th	18th	19th	20th
Cowasjee Cooverjee	n		n	n	n	n	n	n												
Dinshaw Hormusjee	n		a	a	a	a	a	a												
Muncherjee Cursetjee	n		n	n	n	n	n	n												
Merwanjee Muncherjee	n		n	n	n	n	n	n												
Tehmooljee Dessaee	n		n	n	n	n	n	n												
Sorabshaw Cursetjee	n		n	n	n	n	n	n												
Uspundiarjee Ruttonjee	n		n	n	n	n	n	n												
Eduljee Ardaseer	n		n	n	n	n	n	n												
Eduljee Heerjeebhoy	n		n	n	n	n	n	n												
Pallonjee Merwanjee	n		n	n	n	n	n	n												
Dadabhoy Pestonjee	n		n	n	n	n	n	n												
Cowasjee Hormusjee Mobed	n		n	n	n	n	n	n												
Cowasjee Dadabhoy	n		n	n	n	n	n	n												
Muncherjee Bazonjee	n		n	n	n	n	n	n												
Ruttonjee Jamsetjee	n		n	n	n	n	n	n												
Nowrojee Inspector	n		n	n	n	n	n	n												
Byramshaw Cursetjee	n		n	n	n	n	n	n												
Cowasjee Mohotabhaee	n		n	n	n	n	n	n												
Cowasjee Furdoonjee Postwalla	n	Approved	n	n	n	n	n	n	Approved	Approved	Approved	Approved with certain modification	Approved	Approved	Approved with certain modification	Approved	Approved	Not approved	Approved	Approved
Cowasjee Bhickajee	a		a	a	a	a	a	a												
Eduljee Merwanjee	n		n	n	n	n	n	n												
Adurjee Eduljee	n		n	n	n	n	n	n												
Dorabjee Pestonjee	n		n	n	n	n	n	n												
Hormusjee Jamsetjee	n		n	a	a	a	a	a												
Ruttonjee Bhickajee	n		n	n	n	n	n	n												
Cowasjee Furdoonjee Manjra	n		n	n	n	n	n	n												
Hormusjee Dadabhoy	n		n	a	a	a	a	a												
Hormusjee Nowrajee	n		n	n	n	n	n	n												
Sapoorjee Sorabjee	n		n	a	a	a	a	a												
Dossabhoy Bazonjee	n		a	a	a	a	a	a												
Framjee Jamsetjee	n		a	a	a	a	a	a												
Pestonjee Framjee	n		a	a	a	a	a	a												
Cursetjee Byramjee	n		a	a	a	a	a	a												
Muncherjee Sorabjee	n		a	a	a	a	a	a												
Bazonjee Framjee	a		a	a	a	a	a	a				a			a			a		
Cowasjee Muncherjee	n		a	a	a	a	a	a												
Tehmooljee Hormusjee Moonsif	n		n	n	n	n	n	n												
Adurjee Jeewunjee	n		a	a	a	a	a	a												
Muncherjee Tehmooljee Mobed	n		n	n	n	n	n	n												
Munchershaw Cursetjee (by proxy)	a		a	a	a	a	a	a				a			a			a		

EXPLANATION.—A. Affirmative, or in favour of the code. N. Negative, or against the code.

The result of the above statement shows a majority of 26 against 14 in favour of the code.

MUNCHERJEE SORABJEE.

A FREE TRANSLATION into English of a Goojratee Petition made by the Parsees of Broach, to the Honorable the Legislative Council of India, against a Draft Code prepared by the Parsees of Bombay.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of the Parsees of Broach—

HUMBLY SHOWETH,

THAT the Acting Magistrate of Broach forwarded to your petitioners through Azum Kavusjee Eduljee Moonsiff, on the 21st June last, the communications noted in the margin, and called upon your petitioners to express their feelings and opinions on the draft code prepared by the Parsees of Bombay. Agreeably to this request your petitioners respectfully take the liberty to forward the accompanying statement containing the several objections your petitioners have to the code in question. In the opinion of your petitioners the provisions of section III. of the said code are most objectionable.

Letter No. 1088 of the 19th May 1860, from the Under Secretary to the Government of India, to the Chief Secretary to the Government of Bombay.
Letter No. 2080 of the 13th June 1860, from the Chief Secretary to the Government of Bombay to the Acting Magistrate of Broach.

In accordance with the immemorial and time-honoured customs among your petitioners, the property of a Parsee dying intestate devolves on his sons, his daughters and widow being provided with suitable maintenance. It is now about eight centuries since your petitioners' ancestors first settled in Broach, and during the whole of this period never have the widows and daughters of deceased intestate Parsees been allowed to share the deceased's property with their sons and brothers.

That while the code was under preparation, the managing committee of the Parsee inhabitants of Bombay sent to your petitioners a set of questions on inheritance, divorce, &c., to which your petitioners returned answers in conformity with the immemorial customs and usages that prevailed in their community; but your petitioners are grieved to find that their answers have not been taken into consideration by the said committee, as the provisions of the code are in many respects quite opposed to the customs and usages that obtain among your petitioners.

It is only about a hundred years since Parsees have first settled in Bombay. The forefathers of the Parsees now residing in Bombay, if not they themselves, were all inhabitants of the several towns in Goozerat, such as Surat, Broach, Nowsaree, &c., and consequently the customs and usages which prevail among the Parsees in Goozerat were, and in most cases are still, observed in Bombay. Latterly, when the English law was made applicable to the Parsees in Bombay, in cases of inheritance, divorce, &c., by the Judges of the Supreme Court, they the Bombay Parsees found the same very oppressive, and were in consequence compelled to frame the code; but your petitioners do not at all suffer from any such inconvenience, disadvantages, or evils, as similar cases among the Parsee community at Broach are decided in the Civil Courts in accordance with its immemorial customs and long established usages. The Parsees of Bombay will, in case the draft code is passed into law, be benefited in some respects, but should the code in question be made applicable by your Honorable Council to your petitioners, they, your petitioners, will in lieu of deriving any benefit, suffer much from it.

Your petitioners therefore most humbly and respectfully pray that they, your petitioners, be exempted from the code in question.

And your petitioners, as in duty bound, shall ever pray.

SIGNED BY ABOUT 250 PARSEES.

A FREE TRANSLATION into English of a Goozeratee Statement containing the Objections taken by the Parsee Community at Broach to the Draft Code prepared by the Parsees of Bombay.

SECTIONS OF THE CODE.

I. We have no objection to a Parsee female disposing, by making a will, of the property she may have acquired from her father and mother, and other relations on her father's side. But she cannot be allowed the same liberty with the ornaments, &c. given to her by her husband, father-in-law, and her other "Sasureea" relatives (relations by marriage).

II. We do not object to this section.

III. This is the most objectionable section in the whole code. In conformity with the immemorial custom of the Parsee community of Broach, the property of an intestate Parsee descends to his sons; his daughters and widow being provided with suitable maintenance. The provision of this section deprives the sons, the rightful heirs, of a great portion of their deceased father's property. A father generally incurs more expense in celebrating the marriage, &c. of a daughter than in that of a son. If a father is inclined to bequeath a portion of his property to his daughters he can easily do so by making a will or by bestowing the same on them during his lifetime. In the Parsee community at Broach never have the daughters and widows of deceased intestate Parsees shared their fathers' and husbands' property with their brothers and sons. In Bombay the English law is made applicable to all cases involving questions of inheritance, divorce, &c. among the Parsees residing at that station, and so suffering from this evil and disadvantage, they have framed the code and made this provision of giving a fourth share to each of the daughters and half a share to the widow of an intestate Parsee.

IV. When a Parsee woman dies intestate, her property should, in our opinion, be divided as follows:—

All the property she may have acquired from her husband and other "Sasureea" (relations by marriage) should descend to her husband.

The rest of her property should be equally divided among her sons and daughters.

V. In case a Parsee woman dies in a state of widowhood, all her property should be equally divided among her sons and daughters.

VI. If any child of an intestate Parsee shall have died in his or her lifetime, no share of the intestate's property should be given to the deceased child's husband, or widow, but suitable maintenance should be given to such widow until she re-marries.

If the deceased child be a son, and have any male children, they ought to have the share of their father from their grandfather's property. If the deceased child should have left any daughters, they can have claim on the property of their grandfather to the extent only of their marriage expenses and maintenance.

VII. This section is objectionable, inasmuch as no provision is made therein regarding "paluks" (adopted sons). In accordance with the precepts of our holy religion, when an adult male dies without leaving any male child, he should have a "paluk" (adopted son), who undertakes to perform all the religious ceremonies of the deceased.

VIII. The objections taken to section III. are also applicable to the table contained in this section.

IX. The sons of the deceased should, in the order of their seniority, have certificates for managing the property of the deceased; but when they are all minors, their mother, as their guardian, should have such a certificate. When the deceased has no sons of his body, his adopted son, with the widow's consent, should get the certificate of administratorship. If the deceased be a female, her husband, and failing him, her sons, and failing them, her grandsons, should have such certificates for the management of her property.

X. The objections taken to section IX. are also applicable to this section.

XI. Not objectionable.

XII. The property acquired by a woman from her husband, and other "Sasurcea" relatives, should not be considered as her own, and therefore cannot be disposed of by her in any way she chooses.

XIII. A woman should not, in our opinion, be allowed the liberty of contracting debts, even with her husband's consent. She must, according to our holy religion, remain in submission to her husband. If a woman lives separate from her husband without his consent, she has no right to demand alimony from him; but if the husband does not call her to his house (without any valid cause) he should be compelled to supply her with maintenance.

XIV. Not objectionable.

XV. In case the mother becomes a convert to any other religion, or becomes insane, the custody of the child should belong to the father, even when the child is under six years of age.

XVI. and XVII. Not objectionable.

XVIII. There should be different Punchayets at the several stations where Parsees reside independent of that at Bombay.

XIX. and XX. Not objectionable.

XXI. In case the jurisdiction of the Supreme Court at Bombay be extended to the Mofussil, the code, if passed into law, should not be made applicable to the Parsees residing therein.

To H. B. LINDSAY, Esquire, Collector and Magistrate of Surat.

The Petition of Furdoonjee Jamsetjee and others of Surat—

HUMBLY SHOWETH,

THAT your petitioners in common with the rest of their co-religionists are deeply interested in the matter of a code of laws of inheritance, &c., forwarded by the Parsees of Bombay to the Honorable the Legislative Council of India with a petition for its enactment.

2. That your petitioners, having carefully read and considered the said code, are of opinion that it will be of considerable benefit to the community to which your petitioners belong.

3. That your petitioners have perused with deep regret copy of a petition from Modee Rustomjee Khurshedjee and 21 other Parsees of this town, dated the 13th of May last, to the address of the Honorable the Legislative Council, in which it is stated that the code proposed by the Parsees of Bombay is "for the most part at variance both with the prin-"ciples of our sacred religious authorities and with "the customs prevailing among the Parsees at large." This objection, your petitioners are informed, has been urged against that portion of the code more than any other in which the widows and daughters of a Parsee dying intestate are declared entitled to a share in the property left by the deceased. And your petitioners apprehend that in reply to inquiries recently instituted by the Bombay Government at the instance of the supreme authorities, the same objection will be taken by the said Modee Rustomjee Khurshedjee and other Parsees of Surat who coincide in his views.

4. That your petitioners, although forming a small minority in this city, are nevertheless desirous of recording their protest against the unreasonable opposition made by their fellow citizens in the matter of the above-mentioned draft code.

5. That your petitioners deny that the draft code in question is at variance with the "principles of our sacred religion." With a view to prove that the female members of the family of a deceased Parsee are not disentitled to inherit his property, your petitioners take the liberty of annexing a passage, in the original Persian, from a book called the Ravart of Dustoor Darab Hormazdiar, of which the following is a translation:—

"On the departure of the father or mother from this world to the invisible (that is to say, the other) world leaving sons and daughters, each of the sons, born in wedlock, shall be entitled to one share, and each of the daughters to half a share, and if any son be blind or lame, or be suffering from such other disability in consequence of which he might be unable to provide for himself, he shall have two shares; and if the mother (of the children) be alive she shall be entitled to one share."

6. That there are several other books, relating to the Parsee religion, in which rules of inheritance, similar to the above, are prescribed; but your petitioners have selected the above-mentioned Ravart of Dustoor Darab Hormazdiar, a work which has often been cited as authority by the said Modee Rustomjee Khurshedjee in reply to certain questions propounded to him and other members of the Parsee community of Surat by the Courts of this Zillah with regard to the ancient customs and usages of the Parsees.

7. That in further corroboration of the fact that the ancient customs and usages of the Parsees did not preclude females from inheriting property, your petitioners beg also to append transcript of a letter in Goozratee, addressed to the Court of Adawlut by Modee Khurshedjee Dossabhoy, the father of the said Modee Rustomjee Khurshedjee, and other Parsee inhabitants of Surat, on the 21st September 1818, in reply to a question put to them on the subject of the rights of females to inheritance. In this letter Modee Khurshedjee Dossabhoy and other Parsees have made the following important admission:—

"In reply to the questions whether the daughters are not entitled to inherit any share of the property left by their father, the answer is that originally the daughters were entitled to a small share, but since the arrival of our nation in Hindostan the daughters' shares have been disallowed, and now too the daughters are not entitled to any share."

8. That your petitioners trust that the above-quoted proofs will be deemed conclusive so far as they relate to the ancient laws and usages of the Parsees, which did not exclude the rights of females to inherit property left by Parsees dying intestate.

9. That your petitioners cannot admit the justice and propriety of the above-mentioned views entertained by a majority of the Parsees of Surat, who, having departed from their ancient usages regarding inheritance, wish pertinaciously to adhere to modern usages, by which widows and daughters are precluded from inheriting any portion of the property left by their husbands or fathers, and are allowed bare maintenance only. They cannot approve of the customs by which, on the death of a Parsee not leaving a son, the whole of his property is carried off by his brother or brother's son, to the exclusion of his widow and daughters.

10. That entertaining these sentiments, your petitioners view with pleasure the draft code prepared and transmitted to the Legislature by the Parsees of Bombay, conceding, as it does, the ancient rights of females among the Parsees.

11. That your petitioners beg to express their concurrence with their brethren of Bombay in the said draft code as a whole, and are desirous of seeing the same passed into law.

12. In conclusion, your petitioners pray that you will be good enough to forward through Government, for the information of the Honorable the Legislative Council of India, the foregoing expression of the sentiments entertained by your petitioners regarding the proposed legislation.

And your petitioners, as in duty bound, shall ever pray.

FURDOONJEE JAMSETJEE,
Surat, 11th August 1860. and others.

PERSIAN DEPARTMENT, No. 8, dated the 5th January 1861.

SUBSTANCE of a petition from Patell Ruttonjee Bheemjeebhaee and other Parsee inhabitants of Pergunnah and Talooka Sunjan, Zillah Tanna, to his Excellency the Governor in Council, dated 31st August, received on the 29th September, and ordered to be translated on the 30th November 1860.

THE Bombay Zoroastrians had a pamphlet about laws to be procured for the Zoroastrian community lithographed. It was received in this Pergunnah from Government, accompanied with an order from the Collector of Tannah ; Government had a message sent to us calling upon us to represent to it direct any objection we might have against the pamphlet. We therefore beg to state that there is a very great difference between our manners and customs and those (of the Parsees) of Bombay. We do not wish to write at length on this subject. With our petition, dated 28th May 1836, we submitted to Government (for transmission to the Legislative Council) a pamphlet about the customs as observed by our ancestors agreeably to our religion. We adhere to the same (pamphlet). We beg that the aforesaid petition and pamphlet be acted upon. We abstain ourselves from giving trouble to Government frequently. A copy of the pamphlet alluded to is herewith forwarded. It is a correct draft of our laws. We are willing to conduct ourselves in accordance with it. We beg that this draft may be sent to the Legislative Council and passed into law. We do not agree to the pamphlet sent to us by the Bombay (Parsee) gentlemen through Government.

VENAYEK WASSOODEW,
Oriental Translator to Government.

PERSIAN DEPARTMENT, No. 9, dated 5th January 1861.

SUBSTANCE of a petition from Eduljee Cowasjee Guzdar and other Zoroastrian Parsee inhabitants of Tanna, to his Excellency the Governor in Council, dated 20th September, received on the 1st October, and ordered to be translated on the 30th November 1860.

THE committee formed in Bombay for obtaining laws for the Zoroastrian community prepared a draft code, relating to inheritance, succession, and other matters connected therewith, and forwarded it to Calcutta for the purpose of getting it passed into law by the Honorable the Legislative Council of India. The Magistrate of Tannah sent to us through the Mamledar of the Salsette Talooka pamphlets of the aforesaid code, at the same time intimating to us that Government wished to know the views of the Zoroastrians of Tannah on the subject, and therefore calling upon us to state whether, in our opinion, any alterations were required to be made in the proposed draft code. In reply, we beg to state that as the code in question is inconsistent with the doctrines of our religion and with the ancient customs which have prevailed among us for the last twelve hundred years, we cannot give our consent to it.

In section XXI. of the draf code the Bombay (Parsee) gentlemen pray that that enactment may be made applicable only to those Parsees who are resident within and subject to the jurisdiction of Her Majesty's Supreme Courts in India. We most respectfully request that we may not be subjected to the code even if Government passes it for those Zoroastrians who reside within the jurisdiction of the above-named Courts, and if the Zillah tribunals are hereafter placed under them.

VENAYEK WASSOODEW,
Oriental Translator to Government.

N.B.—A similar petition, dated 27th September 1860, has been received from Dustoor Rustomjee Byramjee and other Zoroastrian Parsees of Kullian, Zillah Tanna.

Ditto, ditto, of the 2nd October 1860, has been received from Hormusjee Bumunjee and other Zoroastrian Parsees of Bhewndy, Zillah Tanna.

Ditto, ditto, of the 30th September 1860.

Ditto, ditto, from Hirjee Bheemjee and other Zoroastrian Parsees of Tarapoor, Zillah Tanna.

VENAYEK WASSOODEW,
Oriental Translator to Government.

PERSIAN DEPARTMENT, No. 7, dated 5th January 1861.

TRANSLATION of a Guzerattee petition submitted by Modee Temoorjee Rustumjee and other Members of the Parsee community at Baroda, to the Legislative Council of India, dated 15th, and received and ordered to be translated on the 31st August 1860.

SOME of the Parsees of Bombay prepared a draft code of laws of inheritance, succession, &c., and petitioned your Honorable Council to pass it into law ; whereupon your Honorable Council determined to ascertain whether the Parsees in the Zillahs (including ourselves) agreed to the aforesaid draft what their opinion was on the subject. Accor... Major Wallace, Resident at Baroda, called us on ... 20th June 1860, and made over to us the pamphlet of the aforesaid draft code, requiring us to submit within two months our written answer or opinion on the subject.

1. In reply, we beg to state that we have examined the draft code in question, but we do not agree to it at all, because it is opposed to the customs which have prevailed among us from the time of our ancestors. Moreover, it is not founded on our sacred book called the Zendavusta. Again, the views set forth therein are not compatible with the present condition and the sentiments of our people. The passing of the draft into law will therefore be highly prejudicial to our interests. Propriety requires that not only ourselves, but also people of our caste residing in the island of Bombay, should not be subjected to this injurious and oppressive draft code. We beg to subjoin a brief statement of our reasons.

2. About five years ago some of the Parsees of Bombay, under an impression that they were the head men of the Parsee inhabitants of all the Zillahs in India, appointed a committee, and gave it the name of a committee for procuring a code of laws for the "Parsee community." The committee prepared drafts of arbitrary laws, and had pamphlets thereof printed. In the first place they had no right whatever to obtain a code of laws for the whole Parsee community. Secondly, the drafts prepared by them were so unseasonable, that their adoption would not have failed to cause serious loss to our nation. Consequently, the said pamphlets were disapproved by the Parsees of Broach, Surat, Nowsaree, and other places in the Mofussil. The Parsee community at Surat had pamphlets containing detailed refutations of the drafts in question printed and forwarded to all the Zoroastrians. The Bombay committee thereupon abstained from their intention of subjecting the whole Parsee community to the laws framed by them, but without consulting the people of their own caste, and coming to some agreement with them, they obtained the opinion of English lawyers, and resolved on the 12th January 1859 to apply to your Honorable Council for passing the draft code exclusively for the Parsees residing in the island of Bombay, forwarding a copy of this resolution to the Parsee community of Surat. On taking these circumstances into consideration, your Honorable Council will be satisfied that, from the first, no Zillah community has agreed to this code of laws.

3. We are sorry to state, that although the Bombay committee of their own accord passed the above resolution, yet in paragraph 22 of their petition dated 1st March 1860, they have recommended that we,

Parsees in the Mofussil, should also be subjected to the (proposed) code.

4. The Bombay Parsees propose that widows and daughters should be allowed to inherit property, but this practice has not existed among us from ancient times. Our sacred book called the Zendavusta also does not contain such a provision. The code proposed by the Parsees of Bombay is founded on mere caprice. If we consent to that law, and acting in opposition to a rule which is agreeable to our feelings and compatible with our present condition, make the daughters and the widows of the deceased his heirs while his sons are living, the measure will inflict much injury upon our people, and produce family dissensions among them. The permission to allow widows and daughters to inherit property, instead of benefiting them and the sons of the deceased parties, will entail a loss upon them. It has been customary among us from ancient times, for the son who is the true heir of a deceased individual to support the latter's widow, that is, his own mother, in the same manner as her husband would have done, and on her death to defray her funeral charges, &c. He also supports the deceased's daughters, gets them married, and incurs expense on their account on other occasions. But if shares are given them from the deceased's property, the son will be freed from his obligations, and the widow and daughters ruined. If in consequence of the deceased's widow and the son's wife not agreeing with each other, or of some other reason, the former prefers against her son a claim for subsistence money, to enable her either to live separately from her daughter-in-law, or manage her affairs separately, though living with her, the Civil Courts pass decrees awarding her claim. The widow accordingly gets food, clothing, &c. This statement is borne out by those Courts' records. After obtaining her share, what right will a poor widow have to sue her son for her subsistence money, and on what ground will the trying authority award her claim? Also, what an objectionable and arbitrary settlement for widows and daughters have the Bombay Parsees embodied in their draft code! The Parsees residing in most places are in embarrassed circumstances. If a settlement for widows and daughters is made in accordance with those views of the Bombay Parsees, it will certainly lead to ruin.

5. Section VIII. of the draft code specifies in tables the order in which the relations of a person who has died without issue should succeed to the deceased's property. In the first place, the tables are not right, the names of those persons who have a prior claim to succession being written after those of others. The true heirs will thus be deprived of their inheritance, and the rights belonging to them will be obtained by others. What a hardship is this! Secondly, From ancient times it has been usual among the Parsees, in accordance with the ordinances of their religion, for a son to be given to succeed a man who has died without leaving one. But the Bombay Parsees have made no mention whatever in their draft code of such a foster son. On the contrary, they have provided for granting to the other relations in succession of the deceased the inheritance to which he is entitled. From this it is quite evident that the injunction of our religion, for giving a son to succeed a deceased's party, will be violated.

6. We confidently state that the draft code has been framed by the Bombay Parsees according to their own fancy. We do not think that all the members of the Bombay Parsee community agree to it. The majority of them are dissatisfied with the proposed injurious enactment. This will become manifest to your Honorable Council on the institution of an inquiry. Should few persons have agreed to it, they may have done so under an impression that they are at liberty to make a will (and dispose of their property?). But it is not the custom here for all people to make wills.

7. The Bombay committee have in their draft code given equal liberty to men and women to make wills. But this is not proper. For it is not competent to a woman to bequeath by will, according to her own wishes, the whole of the property possessed by her. She cannot transfer by will to any one, according to her fancy, the jewels forming her dower and other property received by her from her husband during his lifetime. The owner of this property is her husband. After her death, he cannot get another wife in the absence of jewels to be presented in the shape of a dower. If, therefore, a woman is enabled to bequeath by will the jewels, &c. received from her husband, the latter after her death will remain without a second wife, and his family will in consequence become extinct.

8. The Bombay committee have provided in their draft code for only two things. First, The proposed code is not made applicable at all to the party making a will. He is (left) at liberty to bequeath whatever he likes to his widow and daughters, or not bequeath to them even a reas. Secondly, With a view to destroy the name and character of a Parsee who has died intestate, the proposed code has been made applicable to him, whereby shares of his property are granted to his widow and daughters though his sons are in existence. This code is opposed to the customs which have prevailed among us from ancient times, and to our religion, and is also oppressive. For instance, a deceased man's son supports his mother and sisters, defrays all kinds of expenses, such as those on account of deaths, marriages, and other occurrences, and bears the burden of the deceased's liabilities, while his widow and daughters and other relations in succession are declared entitled to inherit his property. What an injustice is this? The deceased's creditors sue his son for the money due to them, and this although his widow and daughters are living. It is evident from the records of the Civil Courts that degrees awarding their claims have been passed even by Her Majesty the Queen's Privy Council. The Bombay committee has, nevertheless, proposed to allow widows and daughters to inherit property. What a pitiful circumstance is this!

9. The division of the property among his widow and daughters will leave very little fortune to the son of a wealthy Parsee. This circumstance will lead successively to the discovery of the extent of his wealth, the diminution of his credit, the stoppage of his extensive transactions, and ultimately the extinction of his father's name. There is no doubt whatever about this. When we think of the proposed draft code, we find it calculated to do various mischiefs. What! are the jewels, &c. received by a widow from her husband, and the property received by the daughters from their father, and after his death from their brother (and this without any trouble), insufficient, that they (the widow and daughters) should be declared entitled to inheritance, thereby making strangers and sons-in-law wealthy, and reducing the sons who are the rightful heirs of the deceased to beggary? This is altogether unreasonable.

10. The Bombay committee have in their draft code declared widows and daughters to be the heirs of deceased parties. This is not proper. This declaration would have been justifiable if the widow, the daughters, and other relations of a deceased individual had not (hitherto) been allowed to inherit his property, though it had been incumbent upon them to pay according to certain fixed proportions the pecuniary claims against him (in case he left behind him debts instead of property), and also to bear the charges of their own subsistence, and defray every kind of expense, such as on account of marriages, &c. &c. The rule on this subject, which has existed from ancient times, is much better and more advantageous than the one now proposed. It is intended to involve the whole Parsee community in misery, and inflict loss upon them by the substitution of the one for the other rule.

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11. Should your Honorable Council think of passing the proposed code exclusively for the Parsees of Bombay, we would, with your permission, represent that if different laws are enacted for the Parsees living under one and the same Government, namely, the British, the measure will occasion much loss (to the people), and serious inconvenience to the dispensers of justice. We, the residents in the Zillahs, will also suffer a loss. We and the Bombay Parsees, profess the same religion. The sons of the majority of the Parsees in the Zillahs live at Bombay, and the parents of those sons reside at Surat, Broach, and other places. Several persons live in Bombay, while their wives reside in the Zillahs. Intermarriages take place between them (that is, the Parsees in Bombay and those in the interior). In this way, we, the inhabitants of the Mofussil, will be subjected to loss, even if the proposed code is passed exclusively for the Parsees of Bombay.

12. We now beg to make our last representation. Most of the sections of the draft code are opposed to our ancient customs. It does not appear to have been based on our sacred book called the Zendavusta. There are various objections existing against each of the sections. If their refutations are written in detail, this representation will extend to a great length. We therefore beg only to state that we do not agree to the proposed draft code.

13. In paragraph 22 of their representation, the Parsees of Bombay have made use of mean and unbecoming words towards those who are of the same caste with themselves. From this it is proved that if the writers themselves had been good and respectable men, they would never have resorted to such expressions. Probably the signatures of other excellent and respectable people were obtained through a fraud. Those people had subsequently to repent much in consequence.

We, the Parsee community of Baroda, do not therefore agree to the proposed draft code.

VENAYEK WASSOODEW,
Oriental Translator to Government.

FROM the Managing Committee of the Parsee Community at Bombay, to the Governor and President in Council of Bombay, dated 9th March 1861.

HONORABLE SIR,

IN March last, the managing committee, appointed at a public meeting of the Parsee inhabitants of Bombay, to prepare a code of laws adapted to the Parsee nation, and to petition the Legislative Council of India for the enactment of such laws, had the honor to forward to that Honorable Body a draft code of laws, accompanied with a petition, setting forth at considerable length the disabilities under which the Parsees are labouring for want of a recognized code of laws adapted to their nation, and soliciting the Legislature to enact the said draft code, and thereby remove the disabilities complained of.

2. On the presentation of the petition with the draft code on the 31st March last, the Legislative Council directed the institution of certain inquiries through Government, with the view to elicit "an "expression of the general feelings and wishes of "the Parsee community with respect to the several "matters embraced in the draft code."

3. On the 13th of June last, in conformity to the wishes of that Honorable Council, the Government of Bombay, through the medium of the Collectors and Magistrates, invited the opinions of the Parsees inhabiting the different Zillahs of the Presidency, and likewise placed the resolution of the Honorable the Legislative Council in the editor's room, from which it was published in the English and Guzeeratte newspapers of Bombay. The time allowed to the Parsee community to express their views and opinions was subsequently extended by the Legislative Council for six months from the 1st of September last, "so as to "afford time for the deliberate expression of the "sentiments of the whole of the Parsee community "in India on the subject in question."

4. The managing committee have to acknowledge with gratitude Mr. Chief Secretary Anderson's communication of the 10th January 1861, by which they were desired to submit to the Government of this presidency, for the information of the Honorable the Legislative Council of India, such remarks as they might have to offer upon the documents therewith transmitted, and which contained the entire body of the results obtained by Government from the inquiries so instituted down to the last-mentioned date. The dates of the documents in question are noted in the margin.

From the Parsee community of Surat, dated 6th August 1860, with enclosures.
Ditto do. of Poonah, dated 9th August 1860.
Ditto do. of Ahmedabad, dated 5th August 1860, with enclosures.
Ditto do. of Broach, without date, with enclosures.
From Furdoonjee Jamsetjee and others of Surat, dated 11th August 1860.
From the Parsee Community of Sanjan, in the Tannah Zillah, dated 31st August 1860.
Ditto do. of Baroda, dated 15th August 1860.
Ditto do. of Tannah, dated 21st September 1860.
From Rustomjee Khoorsetjee Modee, of Surat, dated 1st September 1860, with enclosure.

5. In compliance with that invitation the managing committee have now the honor to submit the remarks which, after an attentive and mature consideration, occur to them upon the perusal of these documents.

6. And first they would most earnestly direct the attention of Government and of the Legislative Council to the unimportant character of the few apparent difficulties opposed by objectors to the adoption of this great measure—a measure which, in policy, humanity, and justice, must in some shape be adopted, and cannot brook a prolonged postonement; inasmuch as without it the Parsee people, and particularly that most important portion of it which is subject to the jurisdiction of Her Majesty's Court of Judicature at Bombay, and from its wealth, refinement, and intelligence, is at once the most in need of wholesome law and discipline, and the most sensible of that need, must, in fact, remain as now, deprived of those great benefits which other communities under British rule enjoy, in having the rights and duties of person, of family, and of race, well defined and secured by just and equal laws.

7. For what is the situation from which the Parsee community seeks relief at the hands of the Legislature?

8. With the solitary exception introduced in their favour, and they thankfully acknowledge, by Act IX. of 1837, which prevented a renewal of the English doctrine of primogeniture (a doctrine opposed to all the ideas and opinions of Parsees) being asserted by a Parsee claimant of a Parsee inheritance, the evils of that situation may be thus summarily and briefly stated.

9. For want of defined and recognized laws, our disposing power by testament is even now a question left undecided by the highest Court of appeal; the temporal rights and incidents derived from marriage, nay, the very nature of the marriage contract itself, left wholly unascertained; re-marriages are without authority; the ties of families are released; morality infringed; successions are become uncertain, and the female sex amongst us is denied the certain protection and recognition which it enjoys amongst other communities.

See Morley's Digest, First and Second Series; titles, Adoption by Parsees; Husband and Wife; Inheritance; Will. And Administration of Justice in India (1858), by the same author, page 326. See also the Surat case of Mody Kaikhusroo Kormusjee *vs.* Kooverbace, Privy Council, 1st September 1857, 5 Weekly Reporter, p. 19; Regina *vs.* Bezenjee, Chief Justice Perry's Oriental Cases, p. 91; Ardaseer Kharsedjee *vs.* Perozbace, 10 Moore's Privy Council Cases, p. 375; Buchabace *vs.* Mermanjee Noserwanjee, Perry's Cases, p. 73; Deo *vs.* Pestonjee, *ibid*, p. 535.

10. Our opponents tacitly confess, that with the exception of Section III., which concedes to females the right of inheritance to their male kinsfolk, and a few other provisions of minor importance, the residue of our proposal is unobjectionable, and, if adopted, will be productive of the good we seek to achieve.

11. The committee of management cannot suppose that it will have escaped the attention of Government how effectually the argument (hinted and suggested,

indeed, but not stated in a tangible way) that in the judgment of the objectors, religion and liberty of conscience are concerned in their objections being acquiesced in, is answered by themselves. If the restoration of the female sex to their heritable rights, for which the intervention of the Legislature is sought, be repugnant to the Parsee religion and conscience, that is a difficulty unsusceptible of compromise, because lying at the very root of the matter. And yet we find that the difference between ourselves and them consists but in the degree at which the heritable character of the Parsee woman is to attach. They are prepared to concede to females an absolute right of succession to their female relatives ; nay, the objectors of Surat, Broach, and Poonah do not refuse to recognize in such cases a superior capacity over male offspring and even over parents, and they will even allow, they say, a female succession to be traced through a father ; and those of Broach, at least, going farther still, confess with seeming approbation, that in their view, "if a father is inclined to bequeath a " portion of his property to his daughters, he can " easily do so by making a will."

By all this, they say, the most sensitive conscience will receive no wound whatever, nor will religion be invaded ; but to allow the same female heirs, or any female heirs, to inherit a paternal inheritance, even although every male line shall be exhausted, is to dishonour religion itself.

12. The committee of management rejoice at being unable to discover amongst the documents before them that any one of these objections, or indeed any objection whatsoever, has emanated from a single member of the Parsee community residing within the island of Bombay, a community which in numbers, intelligence, and wealth constitutes a majority of the Parsees in India.

13. The committee now proceed to discuss more at large the objections which the proposed code of laws has encountered in the Mofussil.

14. Their object in so doing, they wish it to be distinctly understood, is to afford to the Legislature the means of determining (first) that the objections raised are not of sufficient weight to induce the Council to refrain from bestowing upon the entire community the so much desired means of present relief and future elevation ; and (secondly) that, should it be unhappily found, which we cannot think, that a general measure is, for any reason, at present inexpedient, at least to the great Parsee population of the island of Bombay, their unanimous desire of so many years may be conceded, even although many of their brethren of some parts of the Mofussil of this presidency should be still left, for a season, to their own inclinations, and the Hindoo customs of the Deccan or of Guzerat...

15. But we should be wanting to all our obligations, were we not also to point out in the same connexion a singular inconsistency, which goes to the whole of this last remaining objection. Those who raise it desire that they may be left alone, as they now conceive themselves to be, and not be subjected to laws whereby married females may make wills of their separate estates, and widows, daughters, and sisters may inherit. For this, they say, they are content to forego for themselves and their posterity all the proposed blessings of a defined code and body of sure and ascertained laws, which would render unnecessary the periodical litigation amongst Parsees of the simplest, the most natural, and the most primary rights of man, such as continually occur in the Supreme Court and the Sudder Adawlut, and, as in cases like those celebrated ones which are referred to in the margin of paragraph 9 of this letter, not unfrequently find their way into the Privy Council to receive a cautious and sometimes doubting adjudication before that eminent tribunal, which, owing to its great experience and learning, well appreciates the injurious consequences of deciding too finally upon customs, usages, and rights upon which it feels itself at the best to be but imperfectly informed. But are these objectors sure that, when they have made the sacrifice, they will have obtained what they seek ? On the contrary, do not they know that the whole tendency of judicial decisions in India is to apply to them and their heritable rights, if possible, the provisions of English law ? It is true that they are denied, by reason of its supposed unsuitableness, many of its benefits. But are they not as frequently subjected, by the same interpreters of that law, to many of its burthens ? And even now, and without the presence of a living and speaking code to regulate the application in due conformity to Parsee wants, is it not notorious that for the very reason that we have no such law of our own, the English doctrines applicable to married women and their separate property ; of next of kin and statutory distributions ; of testamentary appointments and dispositions by married women ; and the like, (much more objectionable, on account of the uncertainty of their application, than the provisions now recommended) — are continually being applied to Parsees ? Surely it is a situation not worth contending for, and this at such a cost.

16. For, it cannot be too often repeated that our brethren have no alternative, in the present order of things, but between the local customs of the Hindoo on the one hand and the English statutes and precedents on the other. With the single exception of the Primogeniture Abolition Act, already noticed, neither the British Parliament nor the Indian Council has hitherto done anything to relieve our body of that perplexing dilemma. We know not where we stand. The laws of husband and wife, as administered on the Plea and Equity sides of that Supreme Court, which has been solemnly determined to possess no means of enforcing, protecting, or even of giving recognition to our marriage contracts and our conjugal rights, apart from property, are yet applied to us. Our Punchayets have no power. Hindoo usages will not avail us here, even if honor and conscience permitted us to invoke them ; and the English law is powerless here, either to withhold its burthens or to accompany them with its benefits.

17. Whether this state of things be, in part at least, attributable to the too narrow language of the legislative Acts and Royal Charters which classified all non-European people within India as Mahomedans and Gentoos, or to the too narrow construction which the Courts at an early period (unlike those of the present day when dealing with the Khojas and the Memons) gave to the word "Gentoos," it is not necessary to inquire. Both causes have, no doubt, contributed to it ; but even if it have been determined that the laws and customs of the Parsees ought to be observed towards and by Parsees, still there would have remained the chief difficulties of our situation then, as now, subsisting. We mean the desuetude into which the whole body of our ancient Persian laws and customs in general, and more specially those of succession, had for a long period fallen, and the general adoption of the habits of Hindoos, and the prejudices of Guzerat in their place; these were mischiefs which nothing but legislation such as we now invoked could remove.

18. This fact leads us at once to the prevailing error, which lies at the base of every one of the objections with which the managing committee are called upon to deal. The mistake of their authors lies in their assuming, without any proof or argument, that the usages to which they wish to adhere, in preference to the provisions now proposed for adoption, are the old usages of Persia, the country to which our ancestors originally belonged, and from which about twelve hundred years ago they came, as emigrants, to settle in Western India. The truth is, that they are no such thing ; they are Hindoo usages adopted by the Parsees long after their landing in Guzerat. This will the more plainly appear when we come, as we now do, to deal with the very first of the objections in the order of the analysis and summary, which we have prepared for our greater

convenience in presenting our comments thereon, and their clearer appreciation by the Government of Bombay and the Indian Legislature.

19. All but one, and we shall presently refer to that one, of the documents before us concur in the great error of supposing that the unjust and unwise usage which debars our females from their national inheritances, is one of Persian mould. Now, it so happens (and there are to be found on the face of the petitions against this measure clear traces of the tradition which we are going to cite) that not only is this not so, but we are able to appeal to our history in India to show at what time, and wherefore, this merely Indian usage came to be adopted amongst us.

20. The result of the inquiries instituted on this subject by the managing committee enables them confidently to state that, not for the purpose of gratifying their male heirs at the expense of their female heirs, but solely to protect the latter against certain hardships and evils under the native rulers, from which their females were then suffering, our ancestors, the Parsees of Guzerat, found themselves in a manner compelled, a few centuries ago, to make that great innovation on their usages in regard to inheritance which is now put forward as though it were of itself an ancient Persian usage, and not a Guzeratee novelty. Hindoo creditors of those Parsee settlers, it seems, had largely availed themselves of the Hindoo law of the land, by which all heirs, male and female, might be compelled to satisfy the debts due by their parents and forefathers. The defenceless position of Parsee females exposed them in a particular manner to their rapacity; they demanded of these the full payment of all debts said to be due from their husbands, fathers, or brothers, and this even in the absence of assets. In default of payment, they were subjected to great indignity and intolerable oppression, and threatened with the disgrace of imprisonment in gaol in execution of judgments, which it was not difficult for the creditors to obtain against those strangers before such tribunals as the country then possessed. These proceedings naturally created a great and wide-spread alarm amongst the Parsees of those days, zealous for the happiness and honour of their women, and sensible of the precariousness of their position in Guzerat, making open resistance impossible. To avert the danger, they determined to put an end to all opportunity for it; they adopted the usage in question, and thereby excluded their females from inheritance in all cases thereafter arising. The measure was successful in saving their female kinsfolk and themselves from the oppression and disgrace which threatened them under such a rule; but under the just and beneficent sway of the British Government, the Parsees are free from apprehensions such as those just referred to. The reason for the usage having therefore ceased, the custom should also cease. Desirous of reverting to their ancient Persian usage of succession, which does not debar females from inheritance, the managing committee see nothing in that borrowed usage of Guzerat, and its obsolete cause, which should incline the Legislature to disappoint their desire.

21. Untenable as we have shown the objection to be, its authors are not agreed amongst themselves as to the extent to which they mean to press it, or their modes of stating it. The papers received by the Local Government from the various bodies of Parsees residing in the Mofussil, disclose a very wide difference of opinion regarding the right of inheritance to the property left by a Parsee female dying intestate. A large majority of the Parsees of Surat not only admit the claims of her daughters to succeed, but are of opinion that the whole of the intestate's estate descends to her female offspring to the exclusion of her husband and her sons, the husband being, in their opinion, entitled only to the jewel ornaments presented to her by her parents on her marriage. The Parsees of Broach are of opinion that out of the property left by a married female, that portion which was acquired through her husband or his relatives should be separated and should descend to her husband, and the rest of her estate should be given to her sons and daughters in equal proportions. The Parsees of Poona do not admit the right of the intestate's male and female children, if the husband shall have survived her, but in case of his pre-decease, her sons and daughters shall, they say, inherit her property in equal shares. A majority of the Parsees of Ahmedabad declare that "the property of a deceased wife should not go to any one but her husband," and that, if he be dead, her daughters should be shut out from inheriting his property. Thus, with the exception of a small number of the Parsees of Ahmedabad, a large majority of the Parsees of the Mofussil are willing to accord to the daughters a right of inheritance to property left by married Parsee women equal in extent to the shares awarded to the sons, and, in the case of Surat, such property to descend to the daughters, to the exclusion of the sons. After a careful examination of these conflicting views and opinions of the Mofussil Parsees, your Honorable Board and the Legislative Council will, the managing committee trust, hold that the scale of distribution proposed in section IV. of the draft code is more uniform, just, and reasonable.

22. With regard to the right of inheritance to the property left by male Parsees dying intestate, the inhabitants of the Mofussil are, for the most part, unanimous. With the exception of small minorities of the Parsees of Surat, Ahmedabad, and Poona, who justly recognize and cordially approve the right of inheritance proposed to be accorded to widows and daughters, they object to that part of the draft code which sanctions the claims of Parsee females. Their objections have already been anticipated in the managing committee's petition to the Legislative Council, dated 1st March last, which contained the following remarks:—

"It had been the earnest hope of your petitioners to have been able to propose one uniform code of laws, which should be applicable to Parsees residing in all parts of India; but some of their co-religionists residing at Surat and elsewhere, resolutely object to allow widows and daughters to inherit any portion of the property left by an intestate Parsee deceased, and would only allow them a bare maintenance. These Parsees also deny the right of a person absolutely to disinherit his male heirs, but neither of these objections at all arise from such powers of inheritance and disinheriting being opposed to the ancient laws and customs of the Parsees. The opposition really arises from the fact that the Parsees in the interior have, in certain matters, adopted the usages and customs of the Hindoos, and to them pertinaciously adhere; and not having as yet fully experienced the benefits of a liberal education, they persist in their views, though prejudicial and narrow. The Parsees of Bombay who, even numerically speaking, far exceed those of the Mofussil, do not admit the validity of the objections just mentioned, and therefore following the precedents of the Parsee Real Property Act, No. IX. of 1837, they have proposed, and now solicit your Honorable Council to enact the accompanying code, so as to affect Parsees residing within the jurisdictions of Her Majesty's Supreme Courts in India, leaving it to the wisdom of your Honorable Council to extend its provisions to the Parsees of the Mofussil should it be deemed expedient."

23. The objections of the Mofussil Parsees to allow the female members of a Parsee family to inherit any portion, however small, of the property left by a Parsee male, are based on the following grounds:—

First. "The daughters are provided for by the "deceased in his lifetime. If the father be rich, he "gives to his daughters some property proportioned "to his means. If the father shall not have given "any, the brothers according to their circumstances "make some provision for their sisters, and defray

" their necessary expenses." They are married at the expense of their father or brothers. Both before and after marriage, they have no claim on their father's estate, except for maintenance during maidenhood and widowhood.

24. This ground will, the managing committee submit, be held to be unfounded and untenable. The daughters are not so amply provided for by the intestate as his sons. The amount spent on the education, maintenance, marriage, dower, &c., of the daughter is, in most cases, much less than that laid out on the son. The wants of Parsee females are not so few and limited as represented by the Mofussil Parsees. Their obligations compared with those of the males are, it is true, few and limited; but they have, nevertheless, indefeasible natural rights and claims to participate with their brothers in the enjoyment of the estate left by their common parent. These rights and claims they do not and cannot forfeit by entering the marriage state. It is not just towards the weaker sex, in either the single or widowed state, in the judgment of the committee, after a father's or husband's death to leave them wholly dependent upon the bounty of their male relatives.

25. The second ground on which the Mofussil Parsees justify the exclusion of females from inheriting the property of the intestate is this. Unlike his sons, the widow and daughters are not under any obligation to keep up and maintain at a heavy cost the reputation and position of his house or family, nor to provide for and support his household and dependants, nor to defray the expenses of performing funeral and other religious ceremonies.

26. This is the only ground that possesses any weight. The above argument does not apply to the widow with so much force as it does to the daughters; because the widow of the intestate is not wholly exempt from the obligations just referred to. A reference to the 19th paragraph of the managing committee's petition to the Legislative Council will show that in framing section III. of the draft code, they had not overlooked, but had given due weight and consideration to, the reasons just referred to, and that this was the main ground that had induced the committee to reduce the share of the widow to one-half and of the daughters to one-fourth of the share proposed to be allotted to the son of a male Parsee dying intestate. The committee distinctly assigned the following reasons for their limitation of the shares allotted to females in the distribution of the intestate's property :—

" On the death of a Parsee his sons consider themselves under a moral obligation to support the relatives and dependants of that family, to defray the expenses of marriages, of performing funeral and religious ceremonies, and to keep up and maintain the rank, position, and respectability of their father's family—duties and liabilities from which the female members of the family are wholly exempt."

27. The exemption of the daughters from the duties and obligations just alluded to would be and is a good ground for giving the sons or heads of Parsee families a larger share of inheritance; but it would not and cannot justify the total exclusion of the daughters, as advocated by the Mofussil Parsees. Such a negation of the natural rights of female offspring would, the committee humbly submit, be a gross and flagrant violation of the fundamental principles of justice, and they believe that it will be so regarded by the Legislative Council.

28. The third and last ground on which a majority of the Mofussil Parsees seek to disinherit females is, that it is contrary to the injunctions of the Parsee religion, and to ancient usages and customs, to allow widows and daughters to inherit any property. This, the managing committee take leave to deny *in toto*. They are able to make good their denial, not only by the pregnant silence of the " Zend Avasta," so vaguely mentioned (but without reference) by some of the authors of the objection now in hand, but also by the following facts and proofs, which will, they trust, be held to be sufficient and conclusive. Neither the Zend Avasta nor any Sacred Book or authority recognized by Parsees, contains any statement in support of the doctrine that females are not entitled to inherit.

29. Before preparing the draft code, the managing committee transmitted several queries to the Dustoors or High Priests of Bombay, Surat, Poona, and other places, requesting them to favor the committee with detailed replies, describing the rights of inheritancd of Parsee males and females, and the law of husbane and wife, marriage, &c.

To these queries the managing committee received replies from the undermentioned Dustoors or High Priests :—

First. Dustoor Peshotonjee Byromjee Sanjana, High Priest of the "Atesh Behram," or Fire Temple, erected in Bombay by the late Hormusjee Bomanjee Wadia, Esquire.

Second. Dustoor Ardaseer Rustomjee, High Priest of Kadmee Parsees and of Seth Dady Nasserwanjee's Fire Temple.

Third. Dustoor Muncherjee Eduljee, a member of the family of Jamasp Asa, late Dustoor of Nowsaree.

Fourth. Dustoor Cowasjee Dorabjee, a member of the family of Meherjee Rama, late Dustoor or High Priest of Nowsaree.

Fifth. Dustoor Nusserwanjee Jamaspjee, High Priest of Parsees residing in the Deccan.

Sixth. Dustoor Hosanjee Jamaspjee, brother of the last-mentioned Dustoor.

30. All these prelates of the religion of Zoroaster distinctly and unanimously declare, in communications addressed to the managing committee, that according to religious injunctions and ancient usages and customs, the widows and daughters as well as the sons are entitled to inherit portions of the property left by Parsees dying intestate. In support of this fiat they cite extracts from the under-mentioned works in the Pehlvi and Persian languages :—

First. Dadastani Deenee, a Pehlvi work reputed to be composed by Dustoor Munocheher, more than twelve hundred years ago, in the time of the Sassanide Kings of Persia.

Second. Pehlvi Ravayet.

Third. Kholasa-i-Deen or Ravaet of Dustoor Dorab Hormaz Diar, a Persian work often quoted by the Modee and other members of the Parsee community of Surat as an authority on the subject of Parsee laws and usages, and referred to in the petition of Furdoonjee Jamsetjee and several other Parsee inhabitants of Surat, addressed to H. B. Lindsay, Esquire, Collector and Magistrate of Surat, dated 11th August 1860.

31. In one of the papers received by Government, containing the views and sentiments of the Parsees of Poona on the subject of the proposed code, the managing committee find the following important declaration in regard to section III. of the code, which entitles the widow and daughters as well as the son to inheritance :—

" The provision contained in the above section is proper. As to the share awarded to the daughter, it is proper according to religious injunctions, but according to secular customs and usages it appears highly objectionable."

If the share proposed to be awarded to the daughters be right according to religious injunctions, it cannot be held to be objectionable according to secular customs and usages.

32. The managing committee can vouch for the under-mentioned fact represented to this Government in the petition of Furdoonjee Jamsetjee and several other Parsee inhabitants of Surat, already referred to. After expressing their approval of the proposed draft code, they say :—

" That in further corroboration of the fact that the ancient customs and usages of the Parsees did not preclude females from inheriting property, your petitioners beg also to append transcript of a letter in

Guzerattee, addressed to the Court of Adawlut by Modee Khoorshedjee Dassabhoy, the father of the said Modee Rastomjee, and other Parsee inhabitants of Surat, on the 21st September 1818, in reply to a question put to them on the subject of the rights of the females to inheritance. In this letter Modee Khoorshedjee Dassabhoy and other Parsees have made the following important admission :—

"In reply to the question whether the daughters are or are not entitled to inherit any share of the property left by their father, the answer is, that originally the daughters were entitled to a small share, but since the arrival of our nation in Hindoostan the daughters' shares have been disallowed, and now too the daughters are not entitled to any share."

33. The managing committee have obtained from the records of Parsees of Surat a true copy of the above-quoted letter of the late Modee Khoorshedjee Dassabhoy and other members of the Parsee community of that place, which contains the important admission above quoted, that daughters of Parsees were in ancient times entitled to share in the property of their fathers.

34. With reference to the objection of the Parsees of Guzerat to allow widows to inherit any portion of the property left by their husbands, the managing committee beg to invite attention to the fact that the Parsees of the Deccan have no objections to, and have approved, that part of section III. of the draft code which concedes to the widow half the share allotted to the son. In Parsee families the position of the widow is not much inferior to that of her sons, by whom she is deservedly respected and consulted on all matters relating to the family. She should not, therefore, be degraded and deprived of the small share of inheritance conceded to her in the draft code, nor made an object dependent on the caprice of her sons, or, in failure of the sons, the brothers, nephews, or cousins of her husband, as recommended by a majority of the Parsees of Guzerat in opposition to the views and sentiments of the Parsees of Bombay and the Deccan.

35. From the real nature and character of the objections taken by the Mofussil Parsees in regard to section XII. of the draft code, which empowers a married lady to hold and enjoy her own separate property as if she were unmarried, the managing committee feel convinced that it arises purely from misapprehension. The Mofussil Parsees object to this provision, under the idea that jewel ornaments presented to a married female on and after her marriage, by her husband or his parents and relatives, are included in the property described in section XII. of the proposed code, which she can enjoy and dispose of according to her free will and pleasure, without any control being exercised over it by her husband. This idea is an erroneous one. The jewel ornaments above referred to are not intended to be included in the wife's sole and separate property, for which provision is made in section XII. The jewel ornaments in question are in the nature of jointure or dower, subject to the joint control of the husband and wife, but not forming any portion of the wife's sole and separate property, nor subject to debts contracted by the husband without the written authority or permission of his wife. On the death of the husband or wife, the jointure should cease, and jewel ornaments should, the managing committee are of opinion, go to the survivor. With a view to remove all doubt or difficulty in this matter, the managing committee propose the insertion of the under-mentioned proviso in section XII. of the draft code immediately after the words "Any woman, whether married or single :"—

"Excepting only the toys, jewels, ornaments, or paraphernalia given to the wife by her husband or his relatives, in contemplation of and during her marriage, which shall revert to her husband in case of her death."

This amendment would fully meet the objections offered by the Parsees of Guzerat to portions of Section I. and XII. of the proposed code under the misapprehension just pointed out. The managing committee may therefore safely assume that, with the exception of the Parsees of Poona, the inhabitants of all places in the Mofussil, as well as the presidency town, have no objection to, and are in favour of, that portion of the draft code which acknowledges and concedes the right of a married woman to hold and dispose of her own separate property. The Parsees of Poona stand alone in the objection which they take, that "according to the doctrines of the (Parsee) religion, "a woman cannot make a will according to her own "pleasure, while her husband, being (legally) com-"petent, is alive, except with his consent."

The opinion is totally unfounded and opposed to the expositions communicated to the managing committee by the Dustoors, or High Priests, named in the 29th paragraph of this letter.

36. It has been urged in several petitions from the Zillahs, that the managing committee have entirely overlooked, in their draft code, the injunctions contained in the religious books of the Parsees as regards adoption. In answer to this, the committee have to observe that there is nothing in the draft code prepared by them calculated to prevent a Parsee from adopting a son during his lifetime, and bequeathing to him the whole or a portion of his property by a written instrument, or by his will. As any other course would lead to frequent litigation among Parsee families, and as the religious books of the Parsees are entirely silent in respect to the persons authorized to nominate and appoint an adopted son, and of the amount of inheritance to which he is entitled on the death of a Parsee dying without male issue, the committee have considered it advisable for the interests of their nation to leave this subject untouched in their draft code. With regard to the practice now prevailing in Bombay, and other places inhabited by Parsees, the committee beg to state that in the event of a Parsee dying without male issue, one of his nearest male relations, or some other person, is nominated an adopted son as a matter of religious ceremony, but such person is not considered to stand in the place of a lawful son as regards inheritance to property. In Surat the practice is somewhat different in such cases. For the purpose of excluding the widow and daughters of the intestate from inheritance, the nearest male relative, belonging to a collateral branch of the family, is adopted as son and heir, but if there are several male relatives who have equal claims, they object to such adoption, and having agreed to divide the bulk of the intestate's estate amongst themselves, they nominate some person as "dharam poot" or adopted son, on the express condition that he should not claim more than the stipulated amount, which is fixed, and which is usually very small, and varies from 75 to 500 rupees.

37. The managing committee beg to submit to Government and the Legislative Council the above-mentioned brief review of all the principal objections urged against the draft code by the Mofussil Parsees, and of the grounds on which those objections rest. On taking the above-mentioned remarks and observations into consideration, the Honorable the Legislative Council will, the committee trust, come to the conclusion that no weight can be attached to objections which are unsound in principle, and which do not rest on any other ground than that of recent usages and customs borrowed from the Hindoos.

38. The managing committee believe that the wisest course of legislation would be to enact laws uniformly applicable to Parsees residing in all parts of the country under the protection of the British Government, but even if the Mofussil Parsees should be left untouched by the proposed enactment, the obvious objections to having two different codes of laws applicable to the same class of people, residing within a short distance of each other, will not be removed by abstaining altogether from legislation ; that anomaly already exists. The existing laws applicable to Parsees residing within the jurisdiction of the Supreme Court widely differ from those which prevail

in the Mofussil, as your Excellency in Council and the Legislative Council are no doubt aware.

39. In conclusion, the managing committee trust, that if, on account of the objections urged against the draft code, or for any other reason, it be deemed advisable to recommend the Legislative Council to refrain from making the proposed code applicable to Parsees residing in the Mofussil, still the managing committee solicit the powerful intervention of your Excellency in Council with that Honorable Body for the purpose of urging it to enact the code for the benefit at least of the Parsees residing within the jurisdiction of Her Majesty's Supreme Court, who have no objections to the measure, and who confess the unspeakable disadvantage of being without laws.

40. In the presence of such an evil as this there are few considerations so weighty as to keep their ground against the demand for a remedy; and of those which our opponents have suggested none appear to us to be of such importance as to induce the Legislative Council to reject the petition of an enlightened majority.

41. Therefore, on behalf of the Parsees of the island of Bombay, as represented by their managing committee, unanimously elected by them and unanimous in their own sentiments on this great question, as well as of those Parsees at Surat whose petition in our support is before your Excellency, as also of other brethren scattered over the rest of the Mofussil of this presidency, the managing committee have now the honor, in concluding this maturely considered exposition of their views, to submit the same to your Excellency in Council, with the request that it may be transmitted to the Honorable the Legislative Council of India, and in the assumed hope that it will be accompanied with the powerful recommendation of Government.

I have the honor to be, &c.,
FRAMJEE NASSERVANJEE,
Chairman of the Managing Committee.

Bombay, 9th March 1861.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 13th April 1861.

THE clerk presented a petition from the Parsee inhabitants of Calcutta in favour of the passing of the draft code of laws sent up by the Parsee inhabitants of Bombay.

Mr. Erskine moved, that the petition be referred to the Select Committee on the question to which it related.

Agreed to.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA.

The humble petition of the Parsee inhabitants of Calcutta—

SHOWETH,

THAT your petitioners have carefully examined the draft code of the laws of inheritance, succession, and other matters, prepared and transmitted to your Honorable Council in March 1860 by the managing committee appointed at a public meeting of the Parsee inhabitants of Bombay, held at Bombay on the 20th August 1855, to prepare a code of laws adapted to the Parsee nation, and to petition the Legislative Council for the enactment of such laws.

That your petitioners beg to express to your Honorable Council their general approval of the draft code in question, and their entire concurrence in the views and sentiments expressed in the petition which accompanied that document.

That your petitioners are fully impressed with the belief that the grievances complained of by their fellow-countrymen and co-religionists in their petition to your Honorable Council are such as require an immediate remedy, and that a refusal on the part of your Honorable Council to concede a body of defined laws adapted to the Parsee nation will entail consequences highly prejudicial to the well-being of a rising community like the Parsees, who are devoted in their loyalty and attachment to the British Crown. The English law, which is totally unsuited to the present condition of the Parsees, is applied to them by Her Majesty's Supreme Court at Bombay, whilst the British tribunals in the Mofussil decide their cases chiefly according to Hindoo usages and customs, which too are different from those of the ancient Persians. On the important subject of conjugal rights the Parsees of Bombay are without a legal remedy, the Judicial Committee of the Privy Council having decided, that Her Majesty's Supreme Court does not possess any jurisdiction on the Ecclesiastical side over Parsees. The marriage tie is thus rendered insecure, and your petitioners regret to learn from their friends and relatives in Bombay, that many Parsees, taking undue advantage of such a state of things, discard their lawful wives without grounds, and contract illegal marriages with impunity. If your Honorable Council does not interpose your authority with a view to provide an efficient check for such a growing evil, and remedy the other grievances from which the Parsees have so long been suffering for want of a code of defined laws, the Parsee community will, your petitioners apprehend, suffer grievous wrongs and irreparable injuries.

It has given your petitioners great pain to find that several Parsee communities residing in the interior of the Bombay Presidency offer unreasonable opposition to the enactment of the proposed code of laws. Having carefully examined the grounds of their objections, as promulgated in Goojratee pamphlets published by the Parsees of Surat in 1859, and referred to in paragraph 4 of the petition presented to your Honorable Council by Mody Rustomjee Khoorshedjee and several other members of the Parsee community of Surat, dated 13th May 1860, your petitioners can confidently declare that those objections are unsound and untenable. Your petitioners therefore sincerely trust that your Honorable Council will attach no weight to the objections urged by prejudiced men residing in the interior, who, being accustomed to Hindoo usages, are unwilling to discard them, who object to allow their females to inherit any property whatever, and refuse to adopt a code of laws founded on ancient Persian usages and framed on just and liberal principles, recognizing as it does the natural and inalienable rights of Parsee females to inherit the property left by their fathers, husbands, or other relatives.

That your petitioners beg to assure your Honorable Council that there is no truth whatever in the allegation (put forth by Mody Rustomjee Khoorshedjee and other Parsee inhabitants of Surat in their petition to your Honorable Council) that the propositions embodied in the draft code framed and transmitted to your Honorable Council by the Parsees of Bombay are for the most part at variance with the principles of our sacred religious authorities.

That as your petitioners have been informed that the above allegation has been successfully refuted and disproved by the representatives of the Parsee community of Bombay, they will not trouble your Honorable Council with any refutation thereof.

Under the above-mentioned circumstances your petitioners humbly solicit your Honorable Council to introduce, as soon as practicable, and pass the proposed code of laws for the benefit of the community to which your petitioners belong, and thereby remove the disabilities complained of in the petition of the Parsees of Bombay.

And your petitioners, as in duty bound, shall ever pray.

MANACKJEE RUSTOMJEE,
And 55 other Signatures.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 18th May 1861.

THE clerk presented a petition from certain Parsee inhabitants of Bombay, praying that the draft code of laws sent up by the Parsees of Bombay be not adopted.

Also a petition of Ferozebhoy, wife of Ardaseer Cursetjee, and daughter of the late Framjee Cowasjee, praying for the passing of an Act granting to the Supreme Court power to exercise ecclesiastical as well as criminal jurisdiction over the Parsees in matrimonial and other cases.

Mr. Erskine moved, that these petitions be referred to the Select Committee on the subject to which they related.

Agreed to.

TO THE HONORABLE THE LEGISLATIVE COUNCIL OF INDIA, CALCUTTA.

The humble petition of the undersigned Parsee inhabitants of Bombay—

SHOWETH,

FIRST. That your petitioners beg to bring to your notice that all the laws of inheritance, succession, and other matters contained in the "draft code" prepared by the managing committee appointed at a public meeting of the Parsee inhabitants of Bombay, held on the 20th August 1855, were not framed out and transmitted to your Honorable Council, as it is said by the managing committee in their petition to have been framed out, by the unanimous consent of your petitioners and their co-religionists; and therefore your petitioners and most of their co-religionists do not agree upon and approve of them.

Second. Your petitioners further beg to bring to your notice that the said "draft code" was not read and made known by the said managing committee to your petitioners and most of their co-religionists prior to the day (1st March 1860) when it was sent to your Honorable Council, with a petition from the said managing committee requesting the enactment of the said "draft code."

Third. Your petitioners in objecting to the enactment of the said "draft code," make the following observations:—That all the sections of the "draft code," except the 18th, are in every respect related to Act IX. of 1837, in the matter of intestacy, and the subject of the 18th section is about granting a divorce, and makes the Punchayet a sole arbiter for the same, which is quite contrary to the religion of the Parsees, because in the Parsee religion no husband or wife is allowed to be separated from each other, nor a husband or a wife is allowed to go through the form and ceremony of a second marriage while the husband or a wife by the first marriage is living; and the marriage, if once contracted by going through the requisite ceremonies, is never dissolved. The reason thereof is, that when a husband dies the name of the first wife is taken in the ceremonies that are performed for the dead, with the name of the deceased husband, without which no ceremonies of any sort could be performed; and in the like manner the name of the husband of the first marriage is taken in the ceremonies when the wife of the first marriage dies; and, moreover, bigamy is strictly prohibited among the Parsees in their religion, (but under certain peculiar circumstances, such as the barrenness of the living wife, or her immoral conduct, if it be proved and established by the clearest evidence, to the satisfaction of legal authorities, the Parsees at present have for some years past made it a practice of marrying a second wife while the first one is living). The law against bigamy was ever strictly adhered to by the ancient followers of Zurthert, and by his descendants in India, up to the beginning of the nineteenth century of the Christian era, when it was found that the Parsees were infringing the law, and that many an innocent and unoffending wife was forsaken by a vicious husband on trivial grounds, and a new wife taken with impunity. The evil complained of engaged the attention of the Punchayet at the time, and they resolved by every means in their power to arrest its progress among their countrymen. A public meeting of the Parsee inhabitants of Bombay was convened by order of the Punchayet, in the Fire Temple of Dady Sett, where, among other matters relating to the "body," certain rules strictly prohibiting bigamy were adopted with unanimous consent of the assembly. These rules were passed in 1818, and the Punchayet was the Court of Justice, and its decisions, being invariably given after great care and deliberation, were never disputed by the contending parties. Any one refusing to obey the decision of that tribunal was excommunicated from the caste, and his co-religionists held no further intercourse with him. He was not invited to their feasts, religious ceremonies, funeral processions, or marriage festivals. He could not attend the Fire Temples, nor, if he died in this state of disgrace, could he receive the rites of a "Parsee burial." Priests were prohibited from performing any religious ceremonies in his family. In fact, all intercourse between the party excommunicated and his countrymen was entirely stopped. So great was, therefore, the penalty of excommunication, that the Parsees seldom failed to bow to the decision of the Punchayet at the time. So long as the Punchayet was just and impartial to both the rich and poor, and the caste continued limited in number, and willing to obey the decision of the Punchayet, the law against bigamy was strictly adhered to. Of late, however, a new spirit has sprung up from the partiality and the total apathy of the Punchayet in rendering justice to the aggrieved, and bringing the offender to punishment. Each man, therefore, claims a right of acting as he may think fit, and very often in defiance of the decisions of the flexible Punchayet, and, wilfully opposing both the spirit and letter of our laws and usages, practise bigamy, as well as polygamy; while the higher orders of Parsees are led to practise "bigamy," by the partiality of the Punchayet, the lower orders see that the Punchayet has no power to punish them if they did the same, and therefore do not respect the authority of the Punchayet or its decisions. The Punchayet did not however seem to feel the humiliating position in which it was placed, but continued not only to assume the name of a Punchayet, but fruitlessly attempted to carry on the functions of that body. For the last fifteen or twenty years the body known among the Parsees as the Punchayet has not possessed the slightest influence over the people. It has occasionally exhibited some signs of vitality, but never in the right direction. Its orders, if it ever have issued any, are unheeded or disobeyed. Excommunication from caste, a sentence which the Parsees of old so greatly dreaded, is not only unheeded, but ridiculed by the Parsees at present, as the party excommunicated is sure to possess the sympathy and intercourse of his friends, in the teeth of the order of the Punchayet. It must not be imagined that this state of feeling arises from a riotous community. The decisions of the Punchayet, while they are neither consistent nor impartial, are not in accordance with justice, and the consequence is, that the body is as destitute of moral weight as of legal power. When a friend or relative of any member of the Punchayet, or indeed, any person of wealth or influence, commits an offence against his caste people, he is not only screened, but justified. While if the offender be a poor man, the Punchayet steps forward with all the severity which characterized its rule of old to make him an example to others. Common sense suggests that a body professing to do justice, with one law for the rich and another for the poor, cannot command any moral respect whatever. Its shameless partiality some time since drew forth from one of its oldest and most respectable members an ugly exposure of the acts of his colleagues perfectly fatal to their respectability. This memorable protest was the work of the late late Framjee Cowasjee, Esquire, a name still revered by the whole Parsee community. The Punchayet was thus virtually extinguished, and the late Sir

Jamsetjee Jejeebhoy publicly acknowledged this fifteen years since in a book called Kholasay Punchayet, edited by himself. The Punchayet is now powerless either for good or evil, and performs no other functions than those of trustees to certain charitable funds. The word Punchayet, therefore, now applied to the body, is a misnomer.

Fourth. In 1843, when Ardaser Cursetjee Dady, a member of one of the respectable families, ventured to marry a second wife without any just cause, while his first wife (daughter of Framjee Cowasjee, Esquire,) was living, Framjee Cowasjee, Esquire, wrote to several leading members of the Punchayet separately, (amongst whom were Jamsetjee Jejeebhoy, Nrwrojee Jamsetjee Wadia, Bomanjee Hormusjee Wadia, and Jejeebhoy Dadabhoy), requesting them to adopt immediate measures to prevent the party from doing so, for which the Punchayet never came forward, and the party then had an opportunity to put his designs into execution. Upon which, Framjee Cowasjee, Esquire, addressed a minute to the members of the Punchayet, fully exposing the extent to which corruptions had reached the Parsee community, and the utter apathy and carelessness with which the Punchayet overlooked the unhappy state of things. A short abstract of the late Framjee's minute, from a literal translation of it, was published in an English newspaper some years ago, which runs as follows :—

"I have resolved," says the late Framjee, "that I "shall not hereafter join with you in transacting any of "the Punchayet business. Individuals calling themselves Zoroastrians have now become so reckless "that they look upon 'bigamy' and other monstrous sins as anything but sinful. I can cite "numberless instances of persons in this place who "have not only deserted their lawful wives and "joined in matrimony with others in defiance of the "rules of our community, as also of many who are "recklessly living, and spending their existence in "the houses of unprincipled women. You, who call "yourselves members of the Punchayet, will not "only take no notice of these affairs, but allow such "sinful persons to participate in all rights of Zoroastrianism. You will not bring such offenders to "punishment, but, on the contrary, sometimes think "very lightly of their offences. It cannot be said "that you are not cognizant of this growing evil, "and if you do not discharge your trust faithfully, "what answer will you give to your Maker on the "day of judgment ?"

Fifth. The shameless partiality of the Punchayet, and its being powerless either for good or evil, has given rise to the practice of bigamy as well as polygamy. Few instances of this are sufficient to prove the above facts. When Wadia Ardaseer Hormasjee, notwithstanding his first wife was alive, married a second without the least reason to be dissatisfied with his first wife, and without also having met with any objection from the Punchayet, his example was followed by Ardaseer Cursetjee Dady, a member of the managing committee. Again, Sorabjee Eduljee Syed Ramjunna, an inhabitant of Surat, ill-treating his first wife Nawagbaie Dossabhoy Jungh Walla, obliged her to live separate from him, and married a second wife, Daubaie Nesseranjee Sailorna, by whom the said Sorabjee had two children, one of whom is a girl, who is at present with him, and the other died while an infant. Sorabjee, after cohabiting with his second wife for nearly seven years, obliged her also to live separate from him, having a slight quarrel with her, and in May 1860, married a third wife Dossubaee, (the daughter of Cursetjee Etna). Sorabjee's first wife, Nowagbaie, is at present living in Surat, and the second wife, Daubaie, is at Bombay this day.

Sixth. Your petitioners further beg to state that there is no law of tullock or divorce among the Parsees, nor have they any written law on the subject ; and as the word tullock or divorce is used in the petition by the managing committee, your petitioners humbly request your Honorable Council will inquire of the managing committee to establish by such religious books wherein could be found any written law granting a divorce. The word "tullock" used by the managing committee is not a Zem, or Phelve, or Persian original word. The word "tullock" is borrowed from the Arabic language, wherein are written the Korans of the Mahomedans. The "Korans" allow the Mahomedans polygamy ; there is not to be found a single trace in any of the religious books of the Parsees wherein is allowed polygamy. The managing committee in the 18th section makes the Punchayet a sole arbiter for divorce, but your petitioners do not see why the managing committee should not leave the matrimonial cases to be decided by the Government functionaries. The managing committee has shown in the 10th paragraph of their petition, that in the case of Peerosbaie *versus* Ardaseer Cursetjee Dady, it has been decided by the highest Court of Indian appeal, viz., by the Right Honorable the Judicial Committee of the Privy Council in England, on the 17th July 1856, "that in "matters affecting marriage and conjugal rights the "Supreme Court in Bombay do not possess any "power to exercise jurisdiction over your petitioners "and their co-religionists, and consequently in all "cases relating to marriage, restitution of conjugal "rights, &c. the Parsees are destitute of any remedy "whatever which can be legally enforced." But the managing committee, as your petitioners think intentionally, stated so ; only the Judicial Committee withholds the jurisdiction of the Supreme Court in matters relating to marriage in the Ecclesiastical side of the Supreme Court ; while it is of opinion that the Civil Courts in India can bend their administration of justice to the laws of the various suitors who seek their aid. Again, it is said, in the judgment of the Judicial Committee, that "such remedies we "conceive that the Supreme Court on the Civil side "might administer, or at least remedies as nearly "approaching to them as circumstances would allow. "In suits commenced on the Civil side, the peculiar "difficulties which belong to the exercise of the "ecclesiastical jurisdiction in some matrimonial cases "would not arise. Proceedings might be conducted "on the Civil side with such adaptation to the circumstances of the case as justice might require, "though on the Ecclesiastical side such modification "would be wholly irreconcileable with ecclesiastical "law." Besides the above-quoted paragraphs from the judgment of the Judicial Committee allowing the Supreme Court on the Civil side to administer justice in matrimonial cases, the following paragraph of the same will show that the Sudder Adawlut of Bombay may also administer justice in such cases :—"We "have been led to make these observations not "merely by general considerations, but more particularly by the case of Muburvanjee Nusserwanjee "Appellant *vs.* Awanbaie his wife Respondent, "reported 2 Barrodaile, p. 203. That case shows "that the Sudder Adawlut of Bombay will take "cognizance of matrimonial suits between Parsees, "and will afford them such relief as a due regard to "their own laws and custom will allow." Now from the above-quoted authority your petitioners are led very respectfully to remark that the managing committee has stated falsely, and that too, purposely, because if the managing committee would not show such false reasons in their petition your Honorable Council would not pass the "draft code" into law.

Seventh. Your petitioners also beg to refer your Honorable Council to an extract from the 21st paragraph of the petition of the managing committee, in which it is said that "it has been found by experience "that in cases of matrimony, restitution of conjugal "rights, and other matters, many Parsee families "would be utterly unable to meet and sustain the "heavy expenses which would be incurred by the "institution and prosecution of such suits upon the "Ecclesiastical side of the Supreme Court ; and in "the second place, there is an almost insurmountable

" feeling among Parsees against dragging private " quarrels and disturbances in familes into public " notice."

Eighth. Now your petitioners have only to remark, in referring to the above extract, that the managing committee is quite wrong in this point, because those who are rich and influential are able to meet the heavy expenses which would be incurred by the institution and prosecution of such suits as are mentioned above upon the Ecclesiastical side of the Supreme Court, while those who are poor paupers get solicitors and barristers from the Government to institute and prosecute their cases for them without charging them any money for the expenses; and there is no kind of feeling among Parsees to drag private quarrels and disturbances into public notice, as it is said to be by the managing committee, and upon the whole the Parsees are able to drag their cases before the Court.

Ninth. Since the time when India became subject to the constitutional sway of the British power, the Parsees are generally governed by the English laws, from which they have not in the least suffered any injury to their rights and privileges; and therefore your petitioners request that the English laws may be made applicable to them, and not those that are framed out by the managing committee of a few influential members of the Parsee community. Your petitioners and their co-religionists should be very unfortunate if ever they were to be deprived of the privileges they enjoy through the administration of the English laws. As British subjects the English laws should be made applicable to them, which they so much honour, and cordially agree in the decisions that are made and judgments given by the legal authority.

Tenth. Your petitioners further beg to state that all the sections contained in the draft code were not made out of their usages and customs, as is said to have been made by the managing committee in their petitions. The laws compiled by the managing committee of a few influential persons should not be applied to the Parsee inhabitants both of Bombay and the Mofussil. The Parsees had no such laws by which they were to be guided since they came in India.

Eleventh. Your petitioners need hardly suggest to your Honorable Council that the English laws, which are productive of happiness and security to English people, are likewise best suited to the wants and requirements of your petitioners and their co-religionists, although they greatly differ in manners, customs, and usages from the English people. The "English laws" are best suited to the present civilized state of the Parsees. The application of the "English laws" will greatly secure the rights and privileges of the Parsee community than if the laws of the draft code be passed and made applicable to them.

Twelfth. In conclusion, your petitioners beg and hope that this their petition will have a due weight before your Honorable Council, and that, after a due consideration, your Honorable Council will be pleased to annul the laws of the draft code, the favor of which will be duly appreciated by your petitioners and their co-religionists for ever.

Thirteenth. The signatures of both males and females have been taken, as the subject of this petition is productive of much good to both sexes.

We beg to remain, &c.,
PERTINJEE TRAMJEE COWASJEE,
and 338 other Signatures.

Bombay, 28th February 1861.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 3rd August 1861.

SIR Bartle Frere presented a report of the Select Committee on the petition from the Parsees of Bombay, with the draft of a code of laws adapted to the Parsee community.

TO THE HONORABLE THE LEGISLATIVE COUNCIL.

WE, the undersigned members of the Select Committee appointed to take into consideration a petition from the Parsees of Bombay, forwarding a draft code of laws applicable to inheritance, succession, and other matters among Parsees,

Petition of Modee Rustomjee Khorshedjee and others of Surat, dated 13th May 1860.
To Secy. to Govt., Home Department, dated 18th May 1860.
Office Memorandum, Home Department, dated 1st August 1860, and enclosures.
To Secy. to Govt. of Bombay, dated 7th September 1860.
From Bombay Govt., dated 22nd March 1861, and enclosures.
Petition of Manackjee Rustomjee, and other Parsees of Calcutta.
Petition of certain Parsee inhabitants of Bombay, dated 28th February 1861.
Petition of Ferozebhoye, wife of Ardaseer Cursetjee, and daughter of the late Framjee Cowasjee, with enclosures.

have the honor to report that we have carefully considered that petition and draft code, and also the other papers specified in the margin.

In none of the papers which have been received by us do we find any expression of opinion by the Judges of the Sudder Court or of the Supreme Court in Bombay, or by the Government of Bombay, or any of its local officers, as to the fitness or sufficiency of the project of law which has thus been submitted on behalf of the Parsee community. It does not appear that the opinions of the local authorities were invited in the references on this subject formerly made by the Select Committee, and we do not feel that we can make final recommendations on so important a question with confidence, or even with propriety, until the deliberate judgment of those authorities shall have been pronounced and considered.

The hope is more than once expressed in these papers that, even if the Council should not be prepared at once to give to this draft code the force of law throughout the whole empire, they may at least consent to enact it for the Parsees subject to the jurisdiction of the Supreme Court. We cannot, however, recommend the enactment of such important provisions of substantive civil law for any one section of the Parsee race or community exclusively.

We feel constrained also to notice that the draft code in its present shape is silent on some important questions with respect to which the petitioners believe that the existing law is most defective. It is proposed, for instance, in Section XVIII., to confer a novel jurisdiction, and recognize a novel procedure, in cases relating to marriage and divorce. But no attempt is made to declare the substantive law which it is proposed in this way to apply.

We are of opinion, finally, that before we could recommend that any special body of laws should be enacted for a separate race or community of persons like the Parsees—scattered over different parts of India, and not known to possess any uniform common law, or definite rules, either religious or social, universally recognized as authoritative for the regulation of their private rights—it would be necessary to ascertain whether a majority of that enlightened community might not prefer that many of their civil affairs should be regulated by the provisions of English law or of laws founded in substance on the principles of jurisprudence recognized in England, but adapted in form to the state of society in this country. It is stated that a commission of learned gentlemen is to be employed in England to prepare on these principles a civil code for India. As regards inheritance, the English law of "Chattels real" has for a quarter of a century governed the transmission by will, and in case of intestacy, of all property of Parsees within the limits of the Supreme Court. And evidence is not before us to show that any evil, or what kind or extent of evil, has resulted from that state of the law.

Further inquiry may lead to the conclusion that special legislation is required on some or all of the points embraced in the draft code, and on other points to which it does not allude; and may show likewise

that this legislation should not follow the analogies of English law, but that it should be based on prevailing usages and traditions. We consider, however, that a deliberate and minute inquiry should be made on the spot into these points. It need not occupy any considerable time. A commission (in which the Supreme and Sudder Courts as well as the Parsee community might be represented), if assembled in Bombay, might receive the evidence of deputations from the Parsee communities in all the other towns from which petitions regarding this code have been received, or might hear the arguments of counsel on behalf of such communities, and might consult all the authorities, written or oral, to which reference has been or might be made; recording afterwards a definite judgment in respect to each point separately; and specifying what appeared in each instance to be the prevailing usage, tradition, or wish of the majority of the entire Parsee community as made known to them. With the report of a Commission of this kind before them, the Council would be in a better position to deal with this important question.

We beg leave, therefore, to suggest that the Government of Bombay be requested to appoint a Commission to make a preliminary inquiry, on the principles above explained, into the usages recognized as laws by the Parsee community in India, and the necessity of special legislation in connection with them.

H. B. E. FRERE.
C. R. M. JACKSON.
C. J. ERSKINE.

The 3rd August 1861.

EXTRACT from the PROCEEDINGS of the LEGISLATIVE COUNCIL on the 10th August 1861.

Sir Bartle Frere moved, that the report of the Select Committee on the petition from the Parsees of Bombay, with the draft of a code of laws adapted to the Parsee community, be adopted.

Agreed to.

No. 131.

FORT WILLIAM, LEGISLATIVE COUNCIL OFFICE, the 10th October 1861.

Office Memorandum.

In compliance with the request contained in Mr. Officiating Under-Secretary Carnac's Office Memorandum No. 1840, dated the 4th instant, the Clerk of the LegislativeCouncil has the honor to forward, for transmission to the Secretary of State, prepared (as nearly as possible) in chronological order, three copies of the papers noted in the margin, being the whole of the proceedings of the Council relative to the enactment of a code of laws for the Parsee community in India, with the exception of the petition from Perogiboye, dated the 16th February last, which is referred to in the extract from the proceedings of the Council on the 18th May last. This is a lengthy document, and was not printed for the reason which now leads to its exclusion from this collection of papers, namely, because it relates to a case of alleged individual hardship or injustice, and abounds in censures on individuals which may be considered libellous, and ought not therefore to be needlessly published.

Attention is also called to the fact that paragraph 5 of the petition from the Parsee inhabitants of Bombay, dated 2nd March last, should not be made public, in as far as it mentions the names of individuals, and contains statements regarding them.

D. SUTHERLAND,
For Clerk of the Council.

Extract Proceedings Legislative Council, 31st March 1860.
Petition of Parsees of Bombay with Draft Code, dated 1st March 1860 (referred to in foregoing Extract).
Extract Proceedings Legislative Council, 20th June 1860.
Petition of Modee Rustomjee Khorsedjee and others, of Surat, dated 13th May 1860 (referred to in foregoing Extract).
To Secretary Government of India, Home Department, dated 18th May 1860.
From Home Department, dated 1st August 1860, and enclosures.
To Secretary Bombay Government, dated 7th September 1860.
Extract Proceedings Legislative Council, 8th September 1860.
Ditto Ditto 6th April 1861.
From Bombay Government, dated 22nd March 1861 (referred to in foregoing Extract).
Extract Proceedings Legislative Council, 13th April 1861.
Petition of Parsees of Calcutta without date (referred to in foregoing Extract).
Extract Proceedings Legislative Council, 18th May 1861.
Petition of Parsee Inhabitants of Bombay, dated 2nd March 1861 (referred to in foregoing Extract).
Extract Proceedings Legislative Council, 3rd August 1861.
Report of Select Committee (referred to in foregoing Extract).
Extract Proceedings Legislative Council, 10th August 1861.

Leg. 4th July 1836.—No. 999 of 1836.

From the ACTING SECRETARY to the GOVERNMENT OF BOMBAY to the SECRETARY to the GOVERNMENT OF INDIA in the Legislative Department, dated 6th June 1836.

SIR,

I AM directed by the Right Honorable the Governor in Council to transmit to you the accompanying original Petition from the Parsee inhabitants of Bombay to the address of the Honorable the Governor-General and Legislative Council of India, together with copy of a letter to the Acting Advocate-General, and of that officer's reply on the subject.

2. The Governor in Council is sensible of the uncertainty in which these documents leave the whole subject at issue, both as to the present legal position of the Parsee race, and as to what change may be expedient, and would not have forwarded the above documents without further inquiry, were it not that this Government is ignorant of the progress making at Calcutta towards the establishment of a general code of laws, and fearful of any reference on this subject being too late; further, that this Government deem it their duty to call the attention of the Supreme Government to the subject and to the Parsee petition.

3. Unprepared as this Government is to offer any satisfactory information or specific suggestion, nevertheless should it be the desire of the Government of India, the Governor in Council is ready to proceed immediately to further inquiries, either through the medium of a Committee or otherwise, to endeavour to ascertain accurately the actual position of the Parsee race at Bombay in point of law, and to consider what legislative measures might properly be adopted in respect to that state, and to report on these points for the information of his Lordship in Council. Should it be the wish of the Government of India that this Government should take these steps, the Governor in Council requests to be favoured with any particular points on which the Government of India would wish for information.

4. Independent of the general claim which all persons resident under the British Government are entitled to prefer to the Legislature for justice and protection, the Parsees, as a most valuable portion of the people of the island of Bombay, have, in the opinion of this Goverment, every right to the utmost consideration in the institution of any general code of laws for the Hindoo British Empire. The Governor in Council, therefore, warmly seconds the request of the petitioners so far as respects the general objects of their petition.

I have, &c.
(Signed) E. H. TOWNSEND,
Acting Secretary to Government.

Bombay Castle, 6th June 1836.

Leg. 4th July 1836.

To the Honorable the GOVERNOR-GENERAL and LEGISLATIVE COUNCIL OF INDIA, &c., &c., &c., Calcutta.

The Humble Petition of the undersigned principal Parsee Inhabitants of Bombay, and Subjects of His Britannic Majesty, dated 20th November 1835,

MOST RESPECTFULLY SHOWETH,

THAT the Parsees, from the time of the arrival of their ancestors in India, have been a distinct race,

and although they may have adopted in some degree the dress and usages of the natives of India, with whom they have intermarried, they have, as far as circumstances would permit, observed the forms of worship which were preserved by their ancestors, and such customs and regulations as have come down by tradition to the living generation. They are at the present time as distinct from Hindoos, Mahomedans, and Christians, as the Parsees who first found their way to India.

2. Your petitioners further have to state that, not having had any regular code of law which had prevailed in ancient times for their guidance respecting the succession to property after the death of . . . person of their religion, the Parsees have generally divided the property immoveable and moveable of a deceased person, who has died without making a will, according to certain usages which have prevailed amongst the most wealthy and respectable families, and in some instances corresponding with the mode of distribution or division which has obtained amongst the Hindoos in this part of India.

3. These usages have so long been submitted to, and have been followed in so many instances from generation to generation, that they have by many persons been considered to have the force of law.

4. It has also been the custom of the Parsees for many years past to make wills in the English and in the Guzeratty languages, and when the wills have been made by a person of sound mind, and free from fraud, their validity has always been admitted, although not formally prepared or witnessed according to the rules said to exist in England, when the wills of landed property are executed.

5. Such wills, from the time of the establishment of the Mayor's Court at Bombay, have been proved, and no instance is remembered by your petitioners in which the will of a Parsee dividing landed property has been set aside because it was not executed in the presence of three witnesses.

6. Until a very recent period no questions have been raised respecting the rights of Parsees to devise their landed property by wills such as have been described, or to divide houses, oarts, lands, and pieces of ground between the widow and children of Parsees who have not left wills according to the usages before alluded to; and no distinction has existed from the nature of immoveable and moveable property; for as with Hindoos and Mahomedans, both kinds have been valued and disposed of alike.

7. This was the state of things your petitioners humbly represent when the Recorder's Court was established, and when for the first time it was declared at Bombay that in all actions and suits against the inhabitants of Bombay, their inheritance and succession to lands, rents, and goods, and all contracts and dealings between party and party, should be determined, in the case of Mahomedans and in the case of Gentoos, by the laws and usages of Gentoos, and when only one of the parties shall be a Mahomedan Gentoo, by the laws and usages of the defendant.

8. The Parsees were, at that period, as distinct from all classes who were then governed by English law as either Mahomedans or Gentoos, but they appear to have been left unnoticed by the Legislature, no doubt because the charter of the Court at Bombay was made like the charter of the Courts at Madras and Calcutta, where few Parsees resided.

9. The inconvenience, however, was not felt while Parsees agreed among themselves and kept themselves and their family disputes and differences from being taken into the Recorder's and Supreme Court; but persons who are interested in promoting litigation have of late prevailed on Parsees to institute suits and actions in the Supreme Court, and to contend that as Parsees are neither Hindoos nor Mahomedans, the inheritance and succession to lands, rents, and goods should be determined according to English law; that land in Bombay is freehold property, and that the eldest son, as heir-at-law, is entitled to inherit houses and land to the exclusion of his brothers, and that all wills not executed according to English law are null and void.

10. If the Supreme Court should determine in favour of the claims last enumerated, the greatest ruin and mischief would be occasioned. The present title to two-thirds of the lands on the island of Bombay would be disturbed. Parsees who now hold possession of valuable property, either in virtue of arrangements with their brothers and other relations or by descent from them, and persons who have purchased from younger sons of Parsees, may all be involved in litigation, and ruinous consequences must ensue.

11. Your petitioners, therefore, most respectfully solicit that you will be pleased, in conjunction with your Legislative Council, to pass a regulation confirming and making valid all that has been done respecting the partition in the sale and purchase of landed properties, of whatsoever nature, where no fraud has prevailed; and further declaring that all persons lawfully claiming under them who have been in the undisturbed possession of lands, houses, oarts, or other immoveable property within the island of Bombay during the period of 25 years now last past, in virtue of any will, or of any partition or division, or other family arrangement, or of any arbitration or award acquiesced in or carried into effect, or of any agreement lawfully entered into, shall be guaranteed in the possession of such property, and not be liable to be dispossessed thereof by any action, suit, or other proceedings.

12. That this is the object of your petitioners; but they submit to the wisdom of the Legislative Council as to the best mode of preventing litigation, which may seek to disturb just and honest transactions which have been entered into by Parsees, and by other persons who have purchased property from them under the belief that such transactions were lawful and according to the usages which had long prevailed among Parsees at Bombay.

13. That if this application cannot be complied with on the representation of your petitioners, they entreat the Legislative Council that they will, with the least practicable delay, cause inquiry to be made at Bombay respecting the usages and customs that have hitherto prevailed among the Parsees at Bombay in respect of the making of wills and the partition of property, to the end that some legislative provisions may be made to confirm all that has been done in virtue of such wills, and in conformity with such usages and customs and without fraud, and to protect those who may now be in the quiet possession of immoveable property from future litigation.

14. Should your Honorable Government, in its wisdom, deem it expedient to consult the Honorable the Judges of His Majesty's Supreme Court of Bombay on this most important subject, we feel convinced their Lordships will bestow every consideration upon it, and suggest what they may deem necessary and expedient for the fulfilment of the urgent request we have thus most respectfully submitted to your consideration.

And your petitioners, &c. &c.

SIGNED BY 125 PERSONS.

Leg. 4th July 1836.—No. 647 of 1836.

From J. P. WILLOUGHBY, Esq., SECRETARY to the GOVERNMENT of BOMBAY, to the ACTING ADVOCATE GENERAL of BOMBAY, dated 26th April 1836.

SIR,

IN transmitting to you the accompanying copy of a petition from the principal Parsee inhabitants of Bombay to the address of the Honorable the Governor General, I am directed by the Right Honorable the Governor in Council to request you will state, for the information of Government, whether, from any proceedings recently had or instituted in the Supreme Court, there appears to be ground for the strong apprehensions expressed in the petition, and especially in the 10th paragraph, and, if so, whether you are of

opinion that some such law as is proposed in the 11th paragraph of the petition would be advisable.

I have the honor to be, &c.

(Signed) J. P. WILLOUGHBY,
Secretary to Government.

Bombay Castle,
26th April 1836.

No. 20 of 1836.

From H. ROPER, Esq., ACTING ADVOCATE-GENERAL of BOMBAY, to J. P. WILLOUGHBY, Esq., SECRETARY to GOVERNMENT of BOMBAY, dated 11th May 1836.

SIR,

I HAD the honor to receive your letter dated the 26th ultimo, respecting a petition addressed to the Governor-General by the principal Parsee inhabitants of Bombay.

The 2nd paragraph of the petition implies that Parsees in India have not any laws peculiar to themselves, and as to the usages according to which the petitioners say the property of deceased Parsees has generally been divided, such usages are merely described as having usually prevailed amongst the most wealthy and respectable families, and as corresponding in some instances with the mode of distribution which has obtained amongst Hindoos.

This statement in the 2nd paragraph of the petition is somewhat inconsistent, as well with a note, I presume by Mr. Borradaile, in the 1st volume, 2nd page, of the reports of "Civil causes adjudged by the Court "of Sudur Udalut for the Presidency of Bombay "between the years 1800 and 1824," as also with a minute made by Mr. Sutherland, when Second Judge of the Sudur Udalut at Surat, and which minute will be found in the 2nd volume of the above-mentioned reports, pages 391 and 392.

According to Mr. Sutherland's minute, the Parsees, on their landing in India, entered into a compact with the Hindoo ruler of Sunjum, whereby they bound themselves to an observance of the customs of the Hindoos, to the extent that, even in matters connected with the Hindoo religion, as adoption, marriage, &c., the ceremonies of the two people are the same, any material difference between them regarding matters of faith and religious worship only, *not law*. Mr. Borradaile, in his note, says that the rules which the Parsees, in their engagement with the Hindoo chief of Sunjum, bound themselves to obey, form, together with the customs of the country which they insensibly picked up, a body of rules differing in few respects from that custom of the country, founded on Hindoo law, which regulates the whole of a Hindoo life, that even in matters connected with religion, as adoption, contract of marriages, &c., the ceremonies of the Hindoos are nearly the same as those performed by the Parsees, that in little else but their faith will the Parsees be found to differ from Hindoos, and that Parsees may safely be pronounced to *have no law*.

Mr. Borradaile's note does not go quite so far as Mr. Sutherland's minute in asserting conformity between Indian Parsees and Hindoos in matters of law; and the 2nd paragraph of the petition above-mentioned does not even go so far as Mr. Borradaile's note in asserting such conformity. Indeed, without an accurate knowledge of the materials from which the note and minute respectively were framed, it is difficult to conclude whether either the note or the minute can be depended on. Probably Mr. Borradaile's note was in some degree founded on Mr. Sutherland's minute. The latter was made in 1822, and Mr. Borradaile published his reports in 1825. On Sunday, the 19th of February 1832, at Bombay, I asked Mr. Sutherland where he got the matter which that minute contained. He replied, "I collected it from different "Parsees."

The statement in the minute, that even in matters connected with the Hindu religion, as adoption, marriage, &c., the ceremonies of the two people are the same, throws some doubts, I think, upon the value of the information given to Mr. Sutherland. Mr. Borradaile, in his note, indeed makes a similar statement. That note, as already observed, was probably founded on Mr. Sutherland's minute, but neither the minute nor the note expressly declares whether adoption is, or originally was, a religious rite or ceremony amongst Parsees. In the report to which Mr. Borradaile's note is appended there is, indeed, the following passage:—"Appellants on this pro-"duced the written opinions of the Priest of Oodee-"pore and Nowsaree, and extracts from their books "of law, which went to prove that a person cannot "enter heaven across the bridge of Chunwud un-"less he leave a son, real or adopted, behind him. "That to oppose or interfere with the rights of an "adopted son is consequently a heinous sin, &c." According to Mr. Sutherland's minute and Mr. Borradaile's note, the law books here spoken of, if any such existed, must have been framed after the arrival of the Parsees in India. The Judge who tried the cause did not see the books themselves, but only alleged extracts. Considering the circumstances under which those written opinions of the priests and those alleged extracts from law books were produced, there is room to doubt whether such opinions and alleged extracts did not impose on the credulity of the Judge, who implicitly relied on them. I have generally found and understood that conflicting opinions to any amount can be obtained to support the different sides of a case, and it seems the only safe course is to examine the authorities upon which such opinions are professedly given.

The passage from the report above quoted would, however, place adoption amongst Parsees on a foundation totally independent of what occurred between the Parsees and the Hindu chief of Sunjum, for it represents it as an original religious rite amongst Parsees, investing the adopted son with certain civil privileges, whereas neither Mr. Sutherland nor Mr. Borradaile expressly speaks of adoption as an original religious rite amongst Parsees. According as they have been influenced by their interests, I have known several lay Parsees insist upon, and several deny, the existence of adoption in their community. Hyde, in his "Historia Religionis Veterum Persarum," pages 409, 410, &c., speaks of the bridge Chunwud, or rather Tchinavud, or Tchinava, but he nowhere mentions adoption as a right or ceremony used amongst Parsees, and I suspect the adoption in use amongst them is a custom insensibly picked up in their intercourse with the Hindoos. That Indian Parsees have set up adoption as one of their religious ceremonies, entitling the party adopted to certain civil benefits, is, however, apparent. On the 13th of February 1835 a cause came on before the Privy Council in which Hamabaee, widow of Dossabhoy, was appellant, and Panjeeabhoy Dossabhoy was respondent, and by the decision in that case I understand the right of adoption amongst Parsees was recognized. The Privy Council appear to have assumed such right of adoption in like manner as it has been assumed in the native courts in this country, but it is difficult to say upon what grounds such assumption was originally made, or how the native courts became entitled to administer any peculiarly Parsee law. The Supreme Courts are not entitled to do so. Besides, what system of law is peculiar to Parsees? The petitioners imply they have no peculiar law, properly so called, and they do not admit themselves to be governed or uniformly guided by the Hindu law. Mr. Borradaile says they have no law. Mr. Sutherland says, any material difference between Hindoos and Parsees regards matters of faith and religious worship only, not law. He appears to ground this statement on the alleged compact of the Parsees with the Hindoo Chief of Sunjum. It is highly improbable so extensive a compact was formed, though, no doubt, opinions, and alleged extracts from books, or books of alleged authority,

might be adduced to support the compact, even to that extent. In Drummond's Guzerattee, Maharattee, and English Grammar, some account of the Parsees, and their interview with the Rajah of Sujan or Sunjum, is given, but it by no means establishes the correctness of Mr. Sutherland's minute. Sir Thomas Strange, in the introduction to the first edition of his Elements of Hindu law, says: "Under "the Presidency of Bombay Hindus and Mahomedans "are tried according to their respective codes, accom- "modated in a certain degree to British ideas, while "the Parsees at the same Presidency are subject, in "criminal as well as in civil cases, to the English "law." In the introduction to the second edition, that branch of the sentence which relates to Parsees is as follows:—"While the Parsees at the same "Presidency are subject, in criminal as well as in "civil cases, to the English law, and in civil ones "to appropriate usage and customs, derived in many "instances from the Hindu, they having, properly "speaking, no law of their own." This sentence is obviously too indefinite to be useful, indeed it is nearly unintelligible. The alteration in the second edition was occasioned by Mr. Sutherland's minute.

I have dwelt on the matters above mentioned in order to show how difficult it would be to ascertain whether there be any system of law peculiar to Parsees; even if such peculiar system did exist, and could be ascertained, the Supreme Courts are not empowered to administer it, and I have always understood that Parsees at Bombay were, strictly speaking, subject to the English law. From this doctrine many difficult points have arisen, and are constantly arising. So long as the existence of real property at this side of India was not insisted upon, comparatively little mischief could accrue, but it might now become necessary to hold that an estate of the nature of a fee simple in the hands of a Parsee was real property, and that such estate could not be devised by a Parsee unless by a will executed as directed by the Statute of Frauds. A decision to that effect would produce much injury. According to my experience Parsees have hitherto made no distinction between immoveable, or landed, and moveable property. They have treated all such property as chattels, distributing it, where the owner died intestate, amongst the next of kin, to the exclusion, however, of female kindred, wherever such exclusion could be effected. In legislating with respect to Parsees, the rights of the female members of that community might be established or declared.

I am not aware of any instance in which lands or immoveable property have been held to be real estate in the hands of a Parsee, or in which the eldest son of a Parsee has been held entitled, as heir, to lands or immoveable property, or in what the will of a Parsee has been held insufficient to pass lands or houses, because such will had not been made as a will of real property is required to be made in England. Such questions, and others, in like manner important to Parsees, are evaded by the Court. Either the cases in which those points arise are decided upon other grounds, independent of such points, or the parties are importuned to refer their differences to arbitration. They submit to such references with reluctance, not that they are now more litigious than formerly, but their Punchayat, I believe, is not in very high repute amongt them, and if parties can obtain the judgment of a Court on their disputes, they frequently prefer such judgment to the decision of private arbitrators.

The better remedy for the petitioners, I think would be an Act declaring the law which is to be considered as having been hitherto applicable to Parsees, and providing that such law shall in future apply to them. The sort of Statute of Limitation suggested by the petitioners would, perhaps, prove a very insufficient expedient, and, as they intend such Act should apply only where no fraud has been practised by the parties to a transaction, I imagine the operation of the proposed statute would be very limited indeed.

I have, &c.

(Signed) H. ROPER.
Acting Advocate-General.

Bombay, 11th May 1836.

(True copies.)

(Signed) E. H. TOWNSEND,
Acting Secretary to Government.

Leg. 4th July 1836.—No. 189.

From the SECRETARY to the GOVERNMENT OF INDIA, in the Legislative Department, to the SECRETARY to the INDIAN LAW COMMISSIONERS, dated 4th July 1836.

SIR,

I AM desired by the Right Honorable the Governor-General of India in Council to forward to you, for the consideration of the Law Commissioners, the accompanying copies of a letter to my address from the Acting Secretary to the Government of Bombay, dated the 6th ultimo, and of its enclosures, on the subject of the laws and usages of the Parsee community.

2. The Commissioners, after taking those documents into their consideration, are requested to state their opinion as to whether it is advisable and expedient to frame any distinct legislative enactment with regard to this class of the Indian community, and, in the event of their deeming this course advisable, either to submit to Government a draft of the provisions which, in the judgment of the Commissioners, should be enacted, or to state generally of what those provisions should consist, should the preparation of them involve much delay.

I have, &c.

(Signed) W. H. MACNAGHTEN,
Secretary to the Government of India.

Council Chamber, 4th July 1836.

Leg. 30th January 1837.—No. 39.

From F. MILLETT, Esq., SECRETARY to the INDIAN LAW COMMISSION, to W. H. MACNAGHTEN, Esquire, SECRETARY to the GOVERNMENT OF INDIA, dated 16th December 1836.

SIR,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter No. 189, dated the 4th July last, forwarding copies of a letter from the Acting Secretary to the Government of Bombay, dated the 6th June 1836, and of its enclosures, on the subject of the laws and usages of the Parsee community, and requiring the Commissioners to state their opinion as to the expediency of framing a distinct legislative enactment with regard to this class of the Indian community; and, in the event of their deeming that course advisable, to submit a draft or the substance of such provisions as they would recommend.

2. In reply I am desired to transmit to you, for the purpose of being laid before the Right Honorable the Governor-General of India in Council, the accompanying draft of an Act which it is, in the judgment of the Commissioners, advisable to pass without delay. The objects of it are to quiet the possession of estates already acquired by Parsees in the way of succession, whether according to the English law of inheritance, which might hitherto have been judicially applied to the case of such estates, or in pursuance of usages or family partitions acted on or acquiesced in by the parties whose interests were concerned; and to fix the law by which the succession to the estates of Parsees, either by inheritance or testamentary disposition, is to be regulated in future.

3. The Commissioners consider it as ascertained that, generally speaking, the Parsees in their own usages recognize no distinction between moveable

and immoveable property in respect of distribution by inheritance or disposal by will. It is mainly on this similarity of practice in regard to the two descriptions of property that the Act now submitted has been framed. But the Commissioners have deemed it right, in consideration of the existing state of the law on this subject, to provide that possession heretofore obtained according to the rules which regulate the transmission of freehold property shall not be liable to be disturbed.

4. In conclusion, I am desired to express the regret of the Commissioners that their reply to this and other important references still before them has been so long delayed. The Right Honorable the Governor-General in Council is aware that this has been in a great measure occasioned by the illness of the members of the Commission. Other causes, however, have contributed to the delay. Their Report in this particular case has been retarded by a correspondence, in part official and in part in a private form, in which they have been engaged with the Judges of the Supreme Court at Bombay on the subject of it. A copy of the official part of that correspondence is herewith submitted.

I have, &c.
(Signed) F. MILLETT, Secretary.

Indian Law Commission,
16th December 1836.

Leg. 30th January 1837.

DRAFT OF PROPOSED ACT.

I. IT is hereby enacted, that from the day of all immoveable property situate within the jurisdiction of any of the Courts established by His Majesty's Charter shall, as far as regards the transmission of such property on the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, be taken to be and to have been of the nature of chattels real and not of freehold.

II. Provided always, that in any suit at law or in equity which shall be brought for the recovery of such immoveable property as is aforesaid, no advantage shall be taken of any defect of title arising out of the transmission of such property upon the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, if such transmission took place before the said day of , and if such transmission were either according to the rules which regulate the transmission of freehold property, or else took place with the acquiescence of all persons to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of such Parsee.

(Signed) F. MILLETT, Secretary.

Leg. 30th January 1837.—No. 8.

From T. B. MACAULAY, Esq., C. H. CAMERON, Esq., J. M. MACLEOD, Esq., and G. W. ANDERSON, Esq., Members of the Indian Law Commission, to The Honorable Sir H. A. D. COMPTON, Knight, Chief Justice, and the Honorable Sir J. W. AWDRY, Knight, Puisne Justice of the Supreme Court of Judicature, Bombay.—Dated 22nd April 1836.

HONORABLE SIRS,

WE have been favoured with the perusal of a letter addressed by the Honorable Sir Herbert Compton to Mr. Anderson, on the subject of the defective state of the law as respects immoveable property possessed by the Parsee inhabitants of the Island of Bombay.

2. The information thus conveyed to us has impressed us with a sense of the necessity of providing by a legislative enactment for the security of the rights of that numerous and opulent class of the community. We should therefore be glad to be furnished officially with all the information which it may be in your power to communicate, and which may be necessary to enable us to prepare for submission to the Right Honorable the Governor-General in Council a draft of a law, of which the object will be to quiet the possession of estates acquired by the Parsees, according to the customs which have hitherto prevailed among them, and to make suitable provisions for the future.

We have the honor to be, &c.
(Signed) T. B. MACAULAY.
C. H. CAMERON.
Indian Law Commission, J. M. MACLEOD.
the 22nd April 1836. G. W. ANDERSON.

(True copy.)
(Signed). F. MILLETT, Secretary.

From H. A. D. Compton, Knight, Chief Justice, and J. W. Awdry, Knight, Puisne Judge of Bombay, to The Honorable T. B. Macaulay, Esq., President, and C. H. Cameron, J. M. Macleod, and George W. Anderson, Esqrs., Members of the Indian Law Commission.

HONORABLE SIR AND SIRS,

1. WE have the honor to acknowledge the receipt of your letter of the 22nd of April last, on the subject of the defective state of the law as respects immoveable property possessed by the Parsis inhabitants of this Island, a subject which had been privately submitted to Mr. Anderson by a letter from Sir H. Compton; and requesting us to furnish you officially with all the information which it may be in our power to communicate, to enable you to prepare for submission to the Right Honorable the Governor-General in Council a draft of a law, of which the objects will be to quiet the possession of estates acquired by Parsis, according to the customs which have hitherto prevailed among them, and to make suitable provision for the future.

2. You must be aware that by the Charter of the Supreme Court we are bound to administer Hindoo and Mahomedan law in matters of contract and inheritance between persons of these classes respectively, that neither of these laws can be applied to the Parsis inhabitants of Bombay, and that the English is the only other law which we are authorized to administer.

3. Cases, however, have occurred, as stated in the letter to Mr. Anderson, which you have perused, touching the title to land at Bombay, in which it has been contended that the law of England must be strictly applied to Parsis in the same manner as if they were British-born subjects.

We have hitherto not been compelled to pronounce any decision, whether the law of primogeniture and the provisions of the Statute of Frauds touching wills of land do or do not apply to Parsis, and on the other hand we have not in any manner recognized the usages of Parsis at Bombay.

4. Indeed, in our judicial capacity, we have scarcely had any experience of Parsis usages. Since we have been at Bombay there has hardly been a serious attempt to adduce any usages which could be contended to have the force of law. We may add our belief, founded on extrajudicial information, derived from what we consider the best sources of information attainable at Bombay, that the Parsis here cannot establish any usages that are tenable, or that can be sustained by books of an authentic nature.

5. With respect to the first part of your communication touching quieting possession, we feel considerable difficulty in recommending any specific enactment, but we submit the following observations to your consideration.

6. We cannot recommend an enactment that the usages of Parsis should have the force of law, because, for the reasons which we submit, we strongly apprehend few, if any of them, will be found to have that consistency which will enable a Court of English law to administer justice according to them, obliged as such a Court is to act on the strict rule, without any discretion, and no less obliged to reject altogether

any alleged rule which is not immemorial, universal, and compulsory. We believe the usages now prevalent to have depended for their sanction upon, and to have fluctuated with, the fluctuating moral influence of their clergy, their punchayets, and other respected or otherwise powerful bodies or individuals. We have perused the papers in one case where, in a family bearing the surname of Gheestah, during the time of our predecessors in the Recorder's Court, it was attempted to prove a custom of posthumous legitimation of an illegitimate child. It is the only considerable instance of the kind we are aware of, and is chiefly remarkable for the number of appeals to the King in Council to which it gave rise, and for the extreme inconclusiveness of the evidence, depending on a total confusion between what is *permitted* and what is *enjoined* by law amongst a people whose peculiar law, if any exists, is purely religious, and without civil power to back it, such confusion is to be expected. We therefore think that to enact that the usages of the Parsis should have the force of law, would probably shake more titles than it would quiet; would lead to much experimental litigation, and perjured or loose testimony; and that fair and *bonâ fide* claims under it would generally be disappointed.

7. We think it most important that the law of succession to property among Parsis should, as early as possible, be settled by an Act; but as that, probably, cannot be immediately completed, and as it is a matter of *hourly urgency* that *bonâ fide* titles should not be shaken by the application of the Statute of Frauds or the law of primogeniture, we think it best to recommend a strong measure indeed, but conformable with the existing practice of taking probate of wills of land, and dividing land on intestacy, viz., that of declaring that all the immoveables of deceased Parsis are to be deemed for the purpose of transmission in the nature of chattels real, and not of freehold.

8. The principle is that of Mr. Fergusson's Act, 9 Geo. 4. c. 33, but carried out to its full extent; we have no reason to apprehend that any injustice will result from it, and we think it better to adopt the existing law of personal succession *in toto* than to leave it open to judicial construction how much should be adopted.

9. This will have the advantage of making the testamentary law uniform as to all kinds of property, and will be as little likely as any course we can think of to suggest the raising of new experimental questions in the place of those which may be settled by it.

10. Should this recommendation be adopted, perhaps it may be expedient that a proviso should be added that no possession after a certain and moderate period of acquiescence should be disturbed by reason of such act. For though we do not believe there will be found one *bonâ fide* case of exclusive inheritance by an eldest son, and few, if any, of wills considered invalid for want of attestation, most family partitions must have involved some principles of compromise, which it might be attempted (and the attempt, even if unsuccessful, might be mischievous) to rip open.

11. A sketch of an enactment, with a proviso, will accompany this letter; they were framed chiefly because, unless we had seen how the idea on the subject could be realized, we could not have recommended the measure with any confidence, and are submitted to the Commissioners, because, on seeing it presented to them in something of a definite shape, they will more readily judge of its advantages or defects.

12. In the proviso which has been thus sketched, it may be remarked that coverture has been omitted among disabilities. The omission has been intentional. Parsee women are almost all married under age, so that, except in the case of widows, such a disability would annul the proviso as to all female claims, and on these we apprehend that the most vexatious questions are likely to be raised, as their shares are less definite than those of brothers, and less reducible to the analogy of English law.

13. We do not think that this omission will work injustice, for, in fact, Parsee married women are accustomed to the possession of property, and are not wanting in vigilance to guard it; their husbands also will have a further interest in asserting the claim, and in the few cases in which it may happen that a husband has an adverse interest, and that therefore the right is not asserted in time, there probably would be relief in equity.

14. If the possession of estates, acquired by Parsis according to the practice which has hitherto prevailed, and by them transmitted to others, can be quieted, a vast advantage will be obtained, and much litigation may be averted. On this part of the subject we can address you with confidence; but to enable the Legislative Council to make suitable provisions for the future, we must confess that we are not at present possessed of sufficient information to enable us to submit to you any opinion or recommendation satisfactory to ourselves.

15. We have already stated that, as far as we can form a correct opinion, the rules or practices of Parsis at Bombay, in respect of inheritance, are not immemorial, universal, or compulsory; and we have reason to believe that if the most intelligent and influential Parsis at Bombay should be invited to communicate to you their own wishes respecting the inheritance and distribution of property, very few would be found to accord in any principle, or to suggest any rule, that you might be disposed to recommend to the Legislative Council. We believe that in many instances of partition and division of the estate of Parsis who have died intestate at Bombay, the parties interested have been governed in a great degree by the usages of Hindoos, and in some cases they have been guided by our Statute of Distributions. Different modes of division and partition have prevailed, as we have been informed, in different families, and sometimes in different branches of the same family.

15. We have been informed that it will be difficult to learn anything on this subject from any books which the Parsis consider authentic. We understand that they chiefly relate to the ceremonials of religion and to morality.

16. The Chief Justice having caused inquiry to be made from European gentlemen at Bombay who have had access to the best and most impartial sources of information, it has been represented to him that there is but one book of authority in existence, which is alleged to be a fragment of the writings of Zoroaster, and that it does not contain any law respecting inheritance.

17. It has also been stated that although there are several books in possession of the Dustoors or Guebs Priests at Yezd and at Bombay, some of which have existed, as is believed, two or three centuries, yet that they have all been compiled or written in India, and that they afford but slight, if any, reason to conclude that the precepts or ordinances contained in these books were written before the emigration of the Parsis at Gauzerut. These books are called Rowayat, and contain religious ordinances founded on tradition and customary usages.

18. The Chief Justice has been assured by a gentleman who is conversant with the languages in which these books are written, Persian and Guzerattee, "that the Parsis have no municipal laws or "civil institutions, and that they have adopted the "laws and customs of the people of the country in "which they have resided." Another gentleman of acknowledged Oriental erudition has stated "that the "traditions of the Parsis are their guide, and are "founded partly on the Hindoo or the Mahomedan "law."

19. Although the latter part of this communication is founded on statements obtained extrajudicially, yet we are induced to state what has thus come to our knowledge, for the purpose of explaining the diffi-

culties which are likely to arise if the inheritance and succession to lands, rents, and goods of Parsis should be regulated by their usages. The knowledge and experience of Mr. Anderson, who has long been acquainted with Parsis and with their habits, manners, and characters, both at this presidency and elsewhere, will enable him to correct or confirm what has been thus submitted.

20. We shall be glad to render any further assistance in our power, if we can in any manner facilitate the accomplishment of the important objects now in contemplation, but we are not aware of anything which it is material to add at present, beyond the following two points; first, that, unless requisite in order to assimilate the law applicable to Parsis everywhere in India, we think, as regards the Parsis in Bombay itself, it will not be necessary or expedient to treat adoption as a mode of constituting the *hæres factus*. They have not been in the habit of relying on it at Bombay (probably from conforming themselves to the law of England), and are much in the habit of making wills, whereby the same object is attained without requiring a court composed of persons of different manners and religion to scrutinize the due performance of a religious and domestic rite. Secondly, that while we recommend an act confirmatory of existing unattested wills, we see no reason why the Parsis of the presidency should not be included in any prospective provision as to the authentication of wills which the Legislative Council may consider generally expedient. The Parsis are quite sufficiently intelligent and accessible to information of public acts affecting them, and as regards attestation in particular, it is conformable to their habits of business.

We have the honor to be, &c.

(Signed) H. A. D. COMPTON, C.J.
J. W. AWDRY, Puisne Judge.

(True copy.)

(Signed) F. MILLETT, Secretary.

Whereas from the incompatibility of the law of primogeniture, and of various provisions of the law relating to wills of real estates, with the usages of the Parsees residing within [the town and island of Bombay, or the jurisdiction of the King's Courts in India], doubts have arisen which have tended greatly to the insecurity of property.

Be it enacted and declared that all immoveable property situate within [the town and island of Bombay, or the jurisdiction of the King's Courts in India], shall, as far as regards its transmission by the last will and testament, or on the intestacy of any Parsee having a beneficial interest therein, be deemed and taken to be of the nature of chattels real, and not of freehold.

Provided always, that no person or representative of any person who shall have acquiesced for the space of years, to be reckoned from any time when he was of full age, of sound mind, and resident within [the town and island of Bombay, or the jurisdiction of the King's Courts in India], in the peaceable possession of any such property, by any person claiming adversely to him, shall sue or avail himself of the suit of any other person to disturb such possession by virtue of anything herein contained.

(True copy.)

(Signed) F. MILLETT, Secretary.

Leg. Department, the 30th January 1837.

RESOLUTION and DRAFT of ACT.

IT has been brought to the notice of the Governor-General in Council that landed property of great value within the jurisdiction of the King's Courts is now held by Parsees, to whom it has descended in conformity with Parsee usages, b t not in conformity with the English law of inheritance.

2. The national usages of the Parsees are not, like the Hindoo and Mahomedan rules of inheritance, marriage, and succession, recognized by law. Nevertheless it appears to his Lordship in Council that Parsees who are in possession of land which they have inherited according to their national usages, and with the acquiescence of all interested parties, ought not to be disturbed in that possession. This appears to his Lordship in Council to be one of those cases in which the strict enforcement of the law would defeat the end for which laws are made, would render property insecure, and would shake the confidence of the people in the institutions under which they live.

His Lordship in Council is disposed to enact that real property within the jurisdiction of the King's Courts shall, as regards its transmission by the will of a Parsee testator, or on the death of a Parsee intestate, be taken to be and to have always been of the nature of chattels real.

4. This enactment will be restricted by two provisoes. One of those provisoes secures in their possessions all who hold such property by what has hitherto been a strictly legal title. The other is intended to give legal validity to those family arrangements which Parsees have heretofore made according to their national customs, in cases in which no objection has been made to those arrangements.

5. In order that time may be given to Parsees who reside at a distance from Calcutta to express their wishes, his Lordship in Council has determined to leave a longer interval than ordinary between the first publication and the final re-consideration of the Act which has been prepared on this subject.

The following draft of that Act is herewith published for general information:—

Act No. of 1837.

I. It is hereby enacted that from the day of all immoveable property situate within the jurisdiction of any of the Courts established by His Majesty's Charter shall, as far as regards the transmission of such property on the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, be taken to be and to have been of the nature of chattels real, and not of freehold.

II. Provided always, that in any suit at law or in equity which shall be brought for the recovery of such immoveable property as is aforesaid, no advantage shall be taken of any defect of title arising out of the transmission of such property upon the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, if such transmission took place before the said day of , and if such transmission were either according to the rules which regulate the transmission of freehold property, or else took place with the acquiescence of all persons to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of such Parsee.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council of India after the 9th day of May next.

(Signed) H. H. MACNAGHTEN,
Secretary to the Government of India.

NOTE.—Act No. IX. of 1837 passed.

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Pt Pestonjee Dhunjeeshaw
17-11-53

LAW OF EVIDENCE (COLONIES).

EAST INDIA (LAW OF EVIDENCE).

RETURN to an Order and to an Address of the Honourable The House of Common dated 13 May 1861 ;—*for*,

(ORDER, 13 May 1861.)

"COPY of the ACT 6 and 7 Vict. c. 22, intituled, 'An ACT to authorise the LEGISLATURES of HER MAJESTY'S COLONIES to pass LAWS for the Admission, in certain Cases, of UNSWORN TESTIMONY in CIVIL and CRIMINAL PROCEEDINGS :' (31st May 1843.)"

(ADDRESS, 13 May 1861.)

"COPY of the ACT No. II. 1855, passed by the Legislative Council of *India*, and which received the Assent of the Governor General on the 2d day of February 1855, intituled, 'An ACT for the further Improvement of the LAW of EVIDENCE.'"

(*Mr. Edward Craufurd.*)

Ordered, by The House of Commons *to be Printed*,
16 *May* 1861.

LAW OF EVIDENCE (COLONIES).

COPY of the Act 6 & 7 Vict. c. 22, intituted, "An Act to authorise the Legislatures of Her Majesty's Colonies to pass Laws for the Admission, in certain Cases, of Unsworn Testimony in Civil and Criminal Proceedings:" (31st May 1843.)

Anno Sexto Victoriæ Reginæ.

CAP. XXII.

An Act to authorise the Legislatures of certain of Her Majesty's Colonies to pass Laws for the Admission, in certain Cases, of Unsworn Testimony in Civil and Criminal Proceedings. 31 May 1843.

Whereas there are resident within the limits of or in countries adjacent to divers of the British Colonies and plantations abroad various tribes of barbarous and uncivilised people, who, being destitute of the knowledge of God and of any religious belief, are incapable of giving evidence on oath in any court of justice within such colonies or plantations: And whereas doubts have arisen whether any laws which have been or which might be made by the Legislatures of such Colonies respectively to provide for the admissibility in such courts of the evidence of such persons are not or would not be repugnant to the Law of England, and therefore null and void; and it is expedient that such doubts should be removed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That no law or ordinance made or to be made by the Legislature of any British Colony for the admission of the evidence of any such persons as aforesaid in any court, or before any magistrate within any such Colony, shall be or be deemed to have been null and void or invalid by reason of any repugnancy or supposed repugnancy of any such enactment to the Law of England; but that every law or ordinance made or to be made by any such Legislature as aforesaid, for the admission before any such court or magistrate of the evidence of any such persons as aforesaid, on any conditions thereby imposed, shall have such and the same effect, and shall be subject to the confirmation or disallowance of Her Majesty in such and the same manner as any other law or ordinance enacted for any other purpose by any such Colonial Legislature.

Laws or ordinances made by the Legislatures of British Colonies for admission of the evidence of certain persons residing therein, shall have the same effect as other Colonial Laws.

II. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

Act may be amended, &c.

EAST INDIA (LAW OF EVIDENCE).

COPY of the Act No. II. 1855, passed by the Legislative Council of *India*, and which received the Assent of the Governor General on the 2d day of February 1855, intituled, "An Act for the further Improvement of the Law of Evidence."

India, Office,
15 May 1861.

J. HAWKINS,
Secretary, Judicial Department.

Act No. II. of 1855.

Passed by the Legislative Council of India.

(Received the Assent of the Governor General on the 2d February 1855).

An Act for the further Improvement of the Law of Evidence.

Whereas it is expedient further to improve the Law of Evidence; it is enacted as follows: Preamble.

I. Act No. X. of 1835 is hereby repealed. Act repealed.

II. Within the territories in the possession and under the Government of the East India Company, all courts of justice, and all persons having by law or consent of parties authority to take evidence, shall take judicial notice of all Regulations and Ordinances made before or on the 22d day of April 1834 by the Governor General in Council of the Presidency of Fort William, in Bengal, by the Governor in Council of the Presidency of Fort St. George, or by the Governor in Council of the Presidency of Bombay, and having the force of law in any part of the said territories, and of all Laws and Regulations heretofore made by the Governor General of India in Council, and of this Act, and of all Acts and Regulations heretofore made, or hereafter to be made by the Governor General of India in Council, constituted for the purpose of making laws and regulations, whether the same be of a public or of a private nature. Judicial notice to be taken of all Acts and Regulations.

III. All courts and persons aforesaid shall take judicial notice of all public Acts of Parliament, and of all local and personal Acts declared by Parliament to be public and to be judicially noticed, and shall admit as *primâ facie* evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King's printer. Judicial notice to be taken of public Acts of Parliament.
What shall be *primâ facie* proof of a private Act.

IV. Every court shall take judicial notice of its own members and officers respectively, and of their deputies and subordinate officers or assistants, and also of all officers acting in execution of its process, and of all advocates, attornies, proctors, vakeels, pleaders, and other persons authorised by law to act before it. Judicial notice to be taken by Court of its own officers, &c.

V. All courts and persons aforesaid shall take judicial notice of the names, titles, and authorities of the persons filling for the time being any one of the following offices in any part of the said territories:—Governor General, Governor, Lieutenant Governor or Deputy Governor, Secretary or Under Secretary to Government, Commander in Chief, Bishop, Member of Council, Legislative Councillor, Judicial notice to be taken of the names, titles, &c., of certain persons.

Councillor, Judge of any of Her Majesty's Courts, or of any Sudder Court, or of any Court of Judicature hereafter to be constituted in the said territories to or in which the powers of any of Her Majesty's Supreme Courts may be transferred or vested.

Judicial notice to be taken of divisions of time, place, &c.

VI. All such courts and persons aforesaid shall take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation and termination of hostilities between the British Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases, such court or person may resort for its aid to appropriate books or documents of reference.

Proof of Government Gazette.

VII. Any Government Gazette of any country, colony, or dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the courts or persons aforesaid.

Proof of Proclamations, Acts of State, &c. Proclamations, &c. when to be *primâ facie* proof of fact.

VIII. All Proclamations, Acts of State, whether legislative or executive, nominations, appointments, and other official communications of the Government, appearing in any such Gazette, may be proved by the production of such Gazette, and shall be *primâ facie* proof of any fact of a public nature which they were intended to notify.

Recital in Act of a fact of a public nature to be *primâ facie* proof.

IX. Any recital contained in any Act of the Governor General of India in Council, constituted for the purpose of making laws and regulations hereafter to be passed, of any fact of a public nature, shall be deemed, before all such courts and persons, to be *primâ facie* evidence of the truth of the fact recited.

Gazette, &c. containing advertisement purporting to be published by authority, to be *primâ facie* evidence of such authority.

X. The Gazette or newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation, or Ordinance, or of any rule or order of a court of justice, or of any Board or officer of revenue, may be received by any such courts or persons as aforesaid as *primâ facie* evidence that such advertisement was published duly under the authority from which it purports to proceed.

Books, maps, &c., to be evidence in matters of public history, &c.

XI. All courts and persons aforesaid may, on matters of public history, literature, science, or art, refer, for the purposes of evidence, to such published books, maps, or charts as such courts or persons shall consider to be of authority on the subject to which they relate.

What books, &c. shall be evidence of foreign law.

XII. Books printed or published under the authority of the Government of a foreign country, and purporting to contain the Statutes, Code, or other written law of such country, and also printed and published books of reports of decisions of the courts of such country, and books proved to be commonly admitted in such courts as evidence of the law of such country, shall be admissible before any such courts or persons as aforesaid as evidence of the law of such foreign country.

Government or public maps, when to be *primâ facie* proof.

XIII. All maps made under the authority of Government or of any public municipal body, and not made for the purpose of any litigated question, shall *primâ facie* be deemed to be correct, and shall be admitted in evidence without further proof.

Persons incompetent to testify.

XIV. The following persons only shall be incompetent to testify:

Children.

1. Children under seven years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Insane persons.

2. Persons of unsound mind, who, at the time of their examination, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness, without the consent previously obtained of the court or person before whom his attendance is required.

Not to be summoned without leave of court.

Children and persons of defective religious belief to testify on simple affirmation.

XV. Any person who, by reason of immature age or want of religious belief, or who, by reason of defect of religious belief, ought not, in the opinion of such court or person, to be admitted to give evidence on oath or solemn affirmation, shall be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.

XVI. The

XVI. The provisions in the last preceding section as to witnesses shall apply to testimony given by affidavit or otherwise in writing as well as to testimony orally delivered. Provisions as to witness to apply affidavits, &c.

XVII. Any such witness wilfully giving false evidence shall be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge shall be varied so as to meet the case. Punishment for giving false evidence.

XVIII. No person shall, by reason of any interest in the result of any suit, or of any interest connected therewith, or by reason of relationship to any of the parties thereto, be incompetent to give evidence in such suit. No incompetency from interest in suit.

XIX. Any party to a civil suit or other proceeding of a civil nature shall be competent and may be compelled to give evidence as a witness therein, either on his own behalf or on behalf of any other party to the suit or proceeding, and also to produce any document in his possession or power, in the same manner as if he were not a party to the suit or proceeding. Provided, that no court or person as aforesaid, other than Her Majesty's Supreme Courts of Judicature, shall compel the attendance of any party to such suit or proceeding, for the purpose of giving evidence therein, except under and subject to the rules prescribed in that behalf in Act XIX. of 1853. Party to suit may be examined as a witness. Proviso.

XX. A husband or wife shall, in every civil proceeding, be competent to give evidence for or against each other; provided that any communication made by husband or wife to the other during their marriage shall be deemed a privileged communication, and shall not be disclosed without the consent of the person making the same, unless such communication shall relate to a matter in dispute in a suit pending between such husband and wife. Husband or wife giving evidence. Proviso.

XXI. A witness, whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession. Witness, &c. not bound to produce document relating to State affairs.

XXII. A witness, being a party to the suit, shall not be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. If any party, however, offer himself as a witness, he shall be bound to produce any such writing or correspondence in his custody, possession, or power, if relevant or material to the case of the party requiring its production. Party to suit not bound to produce certain documents; unless he offers himself as a witness.

XXIII. Every witness summoned to produce a document shall, if the same be in his custody, possession, or power, be bound to bring it, or cause it to be brought into court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof, the validity of any such objection made by the person producing the document shall be determined by the Court; and for the better determination thereof, it shall be lawful for the Court to receive any admissible evidence which the person producing the document may give respecting it; and it shall also be lawful for the Court, except in the case of any document relating to affairs of State, to inspect the document, and if necessary, to call to its assistance any person whom it may appoint to interpret the same; such person, however, shall be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof except to the Court, unless the Court shall order the document to be given in evidence. Witness summoned to produce a document must bring it into court. Mode of determining objection to production. Document relating to affairs of State.

XXIV. A barrister, attorney, or vakeel shall not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he shall have acquired in the course of his professional employment; the privilege, however, is that of the client, and if any party to a suit shall give evidence therein, at his own instance, he shall be deemed thereby to have waived his privilege, and to have consented to the disclosure, by such barrister, attorney, or vakeel, of any matter as aforesaid which may be relevant, and which the barrister, attorney, or vakeel would have been bound to disclose, but for the privilege of his client, and Professional communications.

the barrister, attorney, or vakeel, shall be bound, upon examination, to disclose any such matter.

Persons present in court to give evidence, &c., though not summoned.

XXV. Any person present in court, whether a party or not, may be called upon and compelled by the Court to give evidence, and produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such document, and may be punished in like manner for any refusal to obey the order of the Court.

Person summoned to produce a document not bound to attend personally.

XXVI. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence, and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.

Rules of evidence in Supreme Courts on Ecclesiastical and Admiralty sides.

XXVII. The rules of evidence in Her Majesty's Supreme Courts as to matters of Ecclesiastical or Admiralty Civil Jurisdiction, shall be the same as they are on the Plea side of the said Courts.

Evidence of one witness sufficient proof.

Proviso.

XXVIII. Except in cases of treason, the direct evidence of one witness, who is entitled to full credit, shall be sufficient for proof of any fact in any such Court or before any such person. But this provision shall not affect any rule or practice of any Court that requires corroborative evidence in support of the testimony of an accomplice, or of a single witness in the case of perjury.

Dying declarations when admissible.

XXIX. Where dying declarations are evidence, they shall be received, if it be proved that the deceased was at the time of making the declaration, and then thought himself to be in danger of approaching death, though he entertained, at the time of making it, hope of recovery.

Party allowed to cross-examine and discredit his own witness.

XXX. The party at whose instance a witness is examined may, with the permission of such Court or person, cross-examine such witness to test his veracity, in the same manner as if he had not been called at his instance, and may be allowed to show that the witness has varied from a previous statement made by him.

Former statement admissible to corroborate a witness.

XXXI. In order to corroborate the testimony of a witness, any former statement made by such witness, relating to the same fact, at or about the time when the fact took place, or before any authority, legally competent to investigate the fact, shall be admissible, and for that purpose a copy of any deposition or statement, taken before any Court, judge, justice of the peace, magistrate, or person lawfully exercising the powers of a magistrate, or before a Commissioner or Superintendent for the suppression of Thuggee or Dacoity in the discharge of his duty, shall if certified by such Court, judge, or other officer above-mentioned, under his hand, or the official seal of the Court, or under the hand or official seal of such judge, to be a true copy of such deposition or statement, without further proof, be received as *primâ facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances, if any, which shall be stated in the certificate, or on the face of the deposition or statement.

Witness bound to answer criminating questions.

Proviso.

XXXII. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate such witness, or that it will expose, or tend, directly or indirectly, to expose such witness to a penalty or forfeiture of any kind. Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding.

Witness may be examined as to conviction for felony.

XXXIII. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove such conviction.

XXXIV. A witness

XXXIV. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him. Provided always, that it shall be competent for the judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Cross-examination as to previous written statements.

Proviso.

XXXV. An impression of a document made by a copying machine shall be taken, without further proof, to be a correct copy.

Copy of a document made by a copying machine to be deemed correct.

XXXVI. When an original document is out of the reach of the process of the Court, it shall be lawful for the Court, on application to it in any civil suit or proceeding, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents.

Admission of secondary evidence where original document is out of the reach of process.

XXXVII. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite.

When attested document may be proved as if unattested.

XXXVIII. The admission of a party to an attested instrument of its execution by himself shall be as against him sufficient *primâ facie* proof of such execution of it, though it be an instrument which is required by law to be attested.

Admission *primâ facie* proof of an attested document.

XXXIX. Any entry or statement which would be admissible in evidence after the death of the person who made it, on the ground of its having been made against the interest of the person making it, or on the ground of its having been made in the ordinary course of business, shall be admissible, though the person who made it be not dead, if he is incapable of giving evidence by reason of his subsequent loss of understanding, or is at the time of the trial or hearing *bonâ fide* and permanently beyond the reach of the process of the Court, or cannot after diligent search be found.

Entry made against interest or in course of business when admissible in lifetime of person making it.

XL. Any entry in any books proved to have been regularly kept in the course of business or in any public office, so far as such entry merely refers to and tends to identify by name, description, number, or otherwise, any bank notes or other securities for the payment of money or other property, and the payer-in or receiver of them, shall, in any case where such identification is necessary to be proved, be admissible in evidence for that limited purpose, if it shall appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness.

Entry in course of business when admissible for purpose of identification.

XLI. Any receipt in writing acknowledging the receipt of any money, valuable securities, or goods, shall, on proof of the execution thereof, be admissible in evidence before such Court or person aforesaid, not only against the party giving it, but also against any person in whose favour such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security, or goods acknowledged to have been received.

Receipt when evidence against person other than the giver.

XLII. Whenever a receipt would be admissible under the preceding section if given by a principal, a receipt given by an agent or servant of such principal shall, in like manner, be evidence upon proof of the authority to give such receipt.

Receipt of agent.

XLIII. Books proved to have been regularly kept in the course of business or in any public office shall be admissible as corroborative, but not as independent proof of the facts stated therein.

Books kept in course of business or in a public office admissible as corroborative evidence.

XLIV. The following documents may be admitted as corroborative evidence: certificates of shares and of registration thereof, bills of lading, invoices, account sales, receipts usually given on the payment, deposit, or delivery of money, goods, securities, or other things, provided they be proved to have been given in the ordinary course of business.

Documents admissible as corroborative evidence.

Refreshing memory of witness.

XLV. A witness shall be allowed before any such Court or person aforesaid to refresh his memory by any writing made by himself or by any other person at the time when the fact occurred, or immediately afterwards, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. In such case the writing shall be produced, and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it.

Court may permit a copy of document to be used to refresh memory.

XLVI. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document, provided the Court or person, under the circumstances, be satisfied that there is sufficient reason for the non-production of the original.

Declarations of illegitimate persons, &c., admissible in questions of pedigree.

XLVII. In cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, shall be admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.

Comparison of handwriting, &c.

XLVIII. On an inquiry whether a signature, writing, or seal is genuine, any undisputed signature, writing, or seal of the party whose signature, writing, or seal is under dispute, may be compared with the disputed one, though such signature, writing, or seal, be on an instrument which is not evidence in the cause.

Proof of power of attorney.

XLIX. Any power of attorney which has been executed at a place distant more than 100 miles from the place wherein the action, suit, or proceeding is depending, may be proved by the production of it, without further proof, where it purports on the face of it to have been executed before, and authenticated by a notary public, or any Court, judge, consul, or magistrate.

Proof of dispatch of letter by letter book.

L. Whenever it is proved that a letter book is kept, and that, according to the usual course of business, letters are copied into such book and dispatched, and the letter book is produced, and it is proved that the letter was dispatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the Court may presume the dispatch of that letter according to the usual course of business.

What to be *primâ facie* proof of receipt of letter.

LI. Any book proved to have been kept for marking the dispatch and receipt of letters, containing an entry of the dispatch of a letter, and an acknowledgment of the receipt of such letter, shall, on proof that such entry was made in the usual course of business, be *primâ facie* evidence of the receipt of such letter.

Repeal of part of Section VI. of Act XV. of 1852.

LII. So much of Section 6, of Act XV. of 1852 as provides that every such application as therein mentioned shall be made before issue joined in any such action, or twenty-one days before the trial or hearing of any other legal proceeding as therein mentioned, is hereby repealed.

Extension of Section XVI. of Act VI. of 1854.

LIII. The provision contained in the 16th Section of Act VI. of 1854, that affidavits of particular witnesses, or affidavits as to particular facts or circumstances, may, by consent of the parties, or by leave of the Court obtained upon notice, be used in the hearing of any cause on the equity side of the Supreme Courts, shall extend to all civil actions, suits and proceedings on all sides of the Courts.

Extension of Section XVII. of Act VI. of 1854.

LIV. So much of the 17th Section of the same Act as provides that, upon the hearing of any motion, petition or other proceeding in any of the said Supreme Courts, the Court may, upon the application of any of the parties thereto, or of its own accord, require and enforce the attendance and oral examination before itself of any witness or of any party to the suit, and may also require and enforce the production of any document or documents, and may direct the costs of the attendance and examination of such witness or party to be paid by such of the parties to the suit, or in such manner as it may think fit, shall extend to all civil actions, suits and proceedings on all sides of the said Courts.

Section XXXIII. of Act VI. of 1854 extended.

LV. The 33d Section of the Act No. VI. of 1854, which applies only to proof of accounts on the equity side of the said Supreme Courts, shall extend to and embrace all accounts directed to be taken on any side of the said Courts.

LVI. Whenever

LVI. Whenever by any Statute or Act, Regulation or Ordinance now in force, or any Statute or Act to be hereafter in force, any certificate, certified copy, or other documents shall be receivable in evidence of any particular in any Court of Justice, the same, if it is substantially in the form and purports to be executed in the manner directed by the Statute, Act, Regulation or Ordinance which makes it evidence, shall be *primâ facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character or authority, which it is directed to have, or from which it is directed to proceed.

Proof of official documents.

LVII. The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for rejection or improper reception of evidence.

LVIII. Nothing in this Act contained shall be so construed as to render inadmissable in any Court any evidence which, but for the passing of this Act, would have been admissible in such Court.

Act not to render inadmissible evidence now admitted in the Company's Courts.

LAW OF EVIDENCE (COLONIES).
EAST INDIA (LAW OF EVIDENCE).

COPY of Act 6 & 7 Vict. c. 22, intituled, "An Act to authorise the Legislatures of Her Majesty's Colonies to pass Laws for the Admission, in certain cases, of Unsworn Testimony in Civil and Criminal Proceedings" (31 May 1843); also, Copy of the Act No. II. 1855, passed by the Legislative Council of India, and which received the Assent of the Governor General on 2 February 1855, intituled, "An Act for the further Improvement of the Law of Evidence."

(*Mr. Edward Cranford.*)

Ordered, by The House of Commons, *to be Printed*,
16 *May* 1861.

COPY of the DESPATCH from the Government of *India* to the Court of Directors of the East India Company, dated the 14th May 1857, with its several Inclosures, relating to the System of POLICE in the BENGAL PRESIDENCY.

— No. 1. —

No. 1.
Letter from the Government of India to the Court of Directors.
14 May 1857.

LETTER from the Government of *India* to the Honourable Court of Directors of the East India Company.

Home Department, Judicial.—No. 18 of 1857.

Honourable Sirs,

1. WE have the honour to acknowledge the receipt of your despatch in the Judicial Department, No. 41, dated the 24th September 1856, relative to the reform of the police throughout the older provinces of India.

2. This despatch has been communicated to the local governments with a view to obtain their opinions on the several measures suggested by your Honourable Court. But as all the material questions of police and criminal justice relating to the Lower Provinces, where reform is most urgently needed, had already been under discussion, and as we had before us the recommendations of the Lieutenant-Governor of Bengal on all these questions, and as we are unanimously and decidedly of opinion that it is better to deal with each Presidency and Lieutenant-Governorship separately, according to its own wants, subject to those leading principles which should be common to all, than to endeavour to frame a general scheme for the whole of India, we have acted upon this opinion, and now submit our minutes, together with the previous correspondence, for your Honourable Court's early consideration and orders.

3. We are unanimously of opinion that the appointment of one superintendent of police for the whole of the Lower Provinces, is not expedient; and we consider the existing system of dividing the country into manageable tracts, consisting of four or five districts, and placing each district under the superintendence of a commissioner having authority in all executive departments, including the police, is the best which has yet been devised for India, and one which works well in Bengal, as well as elsewhere wherever it has been introduced. Our honourable colleague, Mr. Peacock, however, is of opinion that, though one superintendent of police for the whole of the Lower Provinces has been found insufficient, two, or at the most three, commissioners of police would be fully able to discharge the duties belonging to the office in the Regulation districts; and, as he considers the office of Commissioner of Revenue and Police in the Lower Provinces unnecessary, he proposes to abolish seven* out of the eight existing commissionerships, and to substitute two or three divisional Commissioners of Police.

4. We agree generally in the views expressed in the Right Honourable the Governor-General's Minute, as to the extent to which it is desirable that a military organisation should be given to the police of Bengal; and we think that a moveable corps of station guards, or military police, should be attached to each division, employed ordinarily in station and escort duties, but ready to assist the civil police in case of need.

5. Our opinions with regard to the proposal of the Lieutenant-Governor to increase the pay of the subordinate civil police will be found in the Minutes.

We

* Patna, Bhagulpore, Bauleah, Dacca, Chittagong, Nuddea, Burdwan.

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We agree generally in approving of this proposal so far as it goes. It will be for your Honourable Court to decide whether the further general increase in the pay of the darogahs, proposed by the Honourable Mr. Grant, is necessary.

6. As to the necessity of increasing the number of deputy magistrates, so as to provide for the closer supervision of the police darogahs, and supply a link in the chain of executive administration which in the North-western Provinces and in the Punjab is so efficiently supplied by the tehsildars, there is no difference of opinion. Even if it should be determined that this class of officers should be divested of all judicial power, it seems certain that their duties as supervising police officers could not properly be performed by a smaller number than that proposed in the Governor-General's Minute.

7. The union of the offices of magistrate and collector, in those districts of the Lower Provinces in which they had been disunited, was proposed by Lord Dalhousie as Governor of Bengal in 1854, but being objected to by the Honourable Mr. Grant in his Minute of the 23d November 1854, the question was referred to the Lieutenant-Governor for his opinion. The views of the Lieutenant-Governor, which are strongly in favour of the measure, were submitted on the 13th March 1855, and the question has since received full discussion in the Minutes, to which we must refer your Honourable Court for our several opinions. The Regulation Districts of the Lower Provinces, in which the two offices are held together, are noted on the margin.* Those in which they have been separated are—(1) Sarun, (2) Shahabad, (3) Patna, (4) Behar, (5) Tirhoot, (6) Monghyr, (7) Purneah, (8) Dinagepore, (9) Rungpore, (10) Rajshahye, (11) Mymensing, (12) Dacca, (13) Sylhet, (14) Tipperah, (15) Chittagong, (16) Backergunge, (17) Jessore, (18) Nuddea, (19) Moorshedabad, (20) 24-Pergunnahs, (21) Burdwan, (22) Hooghly, and (23) Midnapore.

8. With these brief observations, we submit the papers to your Honourable Court, and shall await the expression of your Honourable Court's views on the several points at issue before taking any further steps. We hope to be favoured with those views at an early date.

We have, &c.

(signed) *Canning.*
J. Dorin.
J. Low.
J. P. Grant.
B. Peacock.

Fort William, 14 May 1857.

— No. 2. —

No. 2.
Letter from the Secretary to the Government of Bengal to C. Allen, Esq.
28 April 1854.

LETTER from the Secretary to the Government of *Bengal* to *C. Allen*, Esq., Officiating Secretary to the Government of *India*, Home Department.

Judicial.—No. 924.

Sir, Dated Fort William, the 28th April 1854.

1. I AM directed by the most noble the Governor of Bengal to request that you will lay before the Government of India the enclosed copy of a note prepared under his Lordship's instructions, with the following remarks.

2. During three of the six years that his Lordship has held the Government of India, the local administration of the Government of Bengal has also been in his hands. In those years some of the imperfections, which time had exposed in the frame of the local administration, have been amended. Parliament has lately supplied a remedy for that great deficiency, the effects of which pervaded the entire system, and was felt in every department of the administration—namely, the

* Bhaugulpore, Beerbhoom, Cuttack, Balasore, Pooree, Pubna, Malda, Bogra, Bullooah Fureedpore, Bankoora, Baraset, Chumparun.

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the want of a Lieutenant-Governor, who should be able to devote the whole of his time and capacity to these Lower Provinces alone. There still remain a few conspicuous wants and errors, which his Lordship's experience in this Government has convinced him ought to be supplied and amended; and on which he wishes to submit recommendations to the Government of India before he lays his local authority down.

3. The first of these errors is the separation of the offices of collector and magistrate, contrary to the system which formerly prevailed throughout the Presidency, and to that which still prevails in the Lieutenant-Governorship of the North-western Provinces.

4. It is unnecessary for his Lordship to consume space upon the record by tracing the mode in which this change was gradually established in the Lower Provinces, since the whole is fully and clearly detailed in the annexed note. It is manifest that, at the time when the change was proposed, the Governor-General, Lord Auckland, strongly doubted the expediency of the measure. It is equally manifest that the Honourable Court regarded the proposed change with disfavour, and it is quite certain, in his Lordship's judgment, that the misgivings which were thus expressed in 1836, of the expediency of the measure, were well founded, and that the separation of the two offices has been injurious to the character of the administration and to the interests of the people. For the result has been, that there is now in the Lower Provinces one class of officers, the collectors, of mature standing, highly paid, and with very little work; while there is another class, the magistrates, inadequately paid, with very heavy work,. and without sufficient experience to enable them to do that work in such a manner as fully to command the confidence of the community, however zealous and active they may usually be.

5. These are mischievous evils in themselves. They are doubly mischievous, because they give colour to plausible denunciation of abuses alleged to exist equally in the revenue and judicial management of the East India Company, and lead a distant and ill-informed public in England to receive as startling truths all the outrageous exaggerations they hear or read about "Boy Judges" and idle collectors "shaking the Pagoda Tree."

6. The remedy for such evil as really exists in the present system is simple. It consists, as it seems to his Lordship, in re-uniting the offices of collector and of magistrate. The remedy seems to him to be not only simple but certain; for the additional experience of 17 years has amply tested the opinion expressed by the Lieutenant-Governor of the North-western Provinces in 1837, in favour of keeping these offices united, and has fully confirmed its accuracy.

7. The Governor, therefore, begs leave to recommend to the Government of India that steps should be taken for re-uniting the offices above mentioned, so that there shall be in the Lower Provinces, as in the North-western Provinces, one office of magistrate and collector, and one at least of joint magistrate and deputy collector in each district.

8. His Lordship recommends that this change in the form of administration should be made immediately, if the sanction of the higher authorities be given, whether the other errors which still remain to be noticed shall be corrected or not.

9. These errors are, the perpetual change of civil officers from one district to another, and from one branch of administration to another, and the great deficiency of gradual training, more especially for judicial functions.

10. Those who are acquainted with the details of the system are aware that some explanation may be given of what appears, to many, a total want of all training throughout its different branches. But when people, not acquainted with the details, are told that a young civil officer, after being for some time an assistant, when he is nothing in particular, is made a magistrate; that after a few years, quitting the magistracy for the revenue branch, he becomes a collector; that after a few more years his next step of promotion takes him from revenue duties, and makes him a judge; that if he be a man of ability he will probably, from a judgeship, be moved to the office of commissioner of revenue; and that the same ability will, in all probability, next promote him from a revenue com-

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missionership back to the judicial bench in the Sudder Court,—when people hear that a civil officer thus oscillates through his whole career between executive and judicial duties, and that each step he gains is one which does not tend to fit him for the step that follows after—when people hear all this, what wonder can there be that the administrative system is condemned off-hand, and that all the evidence given in explanation before Committees of Parliament, and then buried deep in folio blue books, wholly fails to remove the ill impression that has been produced?

11. Most probably nothing will ever remove the prejudice so often shown, or silence the clamours of assailants who will never cease to attack. But there is in reality much room for amendment; and his Lordship thinks that the Government of India cannot too soon engage in the attempt.

12. It seems to his Lordship that the true theory of Indian government, such as has been partially followed with success in the North-western Provinces, and still more completely in the Non-regulation Districts, is the entire subjection of every civil officer in a division to the commissioner at the head of it, and the entire subjection of every executive officer in a district to its executive chief. Even as regards judicial officers, his Lordship is inclined to think that a great advantage is gained by placing them in all matters of an executive nature directly under the commissioner, just as the Sudder Court in its executive capacity is subordinate to the local Government, and by leaving them independent only as regards their judicial decisions.

13. Applying this view to the constitution of the civil service in the Regulation Provinces, it strikes his Lordship that the most effective plan of administration would be to equalise the salaries of the chief executive and judicial officers; and to place both in subordination to the commissioner. At the head of every district there would then be a chief executive officer, designated by the title either of magistrate and collector, or by any other more suitable appellation. He would have entire control over every department of the executive in his district, revenue, minor criminal justice, police, registration, public works, education, jail, &c. He would have under him a sufficient staff of covenanted and uncovenanted assistants, and he would be directly and entirely responsible to the commissioner. In one or more districts there would also be an European judge on the same salary as that of a magistrate and collector, charged with the superintendence and administration of civil and criminal justice as at present, responsible to the Sudder Court, but liable to have his executive arrangements inspected, and his supervision over the inferior judges controlled by the commissioner. In every district there would be one or more covenanted assistants (including joint magistrates and deputy collectors) who would be at the disposal of the executive chief, but available for employment under the judge for some portion, say two days, of the week, either as assessors, or assistant judges, in the trial of cases before a full mofussil bench, or in the trial of small original suits, within the jurisdiction of a moonsiff. The assistants would thus gain experience in every department both judicial and executive; they would rise as they became qualified to the superior grade equivalent to that of joint magistrate and deputy collector; and at the end of ten or twelve years' apprenticeship, they would be eligible for independent and responsible employment as either judicial or executive head of a district. They would in this manner be qualified by previous experience for either department, and the choice would be made by Government with due advertence to the qualifications of each officer. Those who showed a preference and a fitness for judicial employ would become judges, and those who preferred executive duty would become magistrates and collectors.

14. The destination and employment of an officer being thus once fixed, there would be no further change either from office to office, or from district to district, until a civil servant became qualified by standing for a commissionership, and consequently the average time during which the executive and judicial administration of each district remained in the same hands would be about ten or twelve years, instead of less than half that time as at present. It is probable that commissioners would ordinarily be selected from among those who had taken the executive line of the service, but the power of the Government to select a commissioner from among the judges should by no means be restricted. So in like manner the selection of judges for the Sudder Court would ordinarily be from among

among those who had followed the judicial line of the service, but it would be of most mischievous effect to tie the hands of Government and prevent it from selecting a man of great ability for the Sudder bench from among the officers of the executive branch. The early training of civilians in all departments would afford the technical experience necessary for the discharge of high functions in either department, and individual ability would supply the rest.

15. Supposing it determined that the salaries of the judges on the one hand, and the magistrates and collectors on the other, are to be equalised, it would then have to be considered what the amount of their salaries is to be. And this question will have to be considered with reference to what is proper and what is practicable; for, on the one hand, his Lordship would not propose any increase in the aggregate expense of the present establishment, and on the other, he thinks it of much importance to fix and maintain the salaries of the officers vested with the highest judicial and executive authority in each district at as high a rate as the present limits of expenditure will allow. After much consideration his Lordship is disposed to think that the salary now given to magistrates and collectors in the North-western Provinces is the best and most convenient standard to take, and he apprehends that this standard, combined with a re-arrangement of the inferior salaries, will be found on the whole to attain, in the least objectionable manner, the objects above referred to, without any positive material deduction in numbers, and with a very material increase in efficiency by means of a better disposition of the force at command.

16. His Lordship is anxious at the same time to get rid of the intermediate scale of 18,000 rupees a year now attached to a few offices under this Government. This intermediate scale gives rise to much inconvenience in practice, for every member of the service who enjoys a salary of 1,000 rupees a month expects to be promoted in his turn to a salary of 1,500 rupees a month, and again to a salary of 2,000 rupees a month; and as there are only seven offices on the intermediate salary, and promotion goes at the rate of about seven steps a year, it follows that, under ordinary circumstances, no man can remain in one of these offices for more than a year, and the inconvenience can only be remedied, and that not always, by making a nominal transfer to the substantive appointment and keeping a junior officer acting in it.

17. The present establishment is as follows:—

26	Judges	at *Rs.* 30,000	*Rs.*	7,80,000
3	Magistrates and Collectors	„ 28,000	„	84,000
23	Collectors	„ 23,000	„	5,29,000
3	Collectors	„ 18,000	„	54,000
1	Magistrate	„ 28,000	„	28,000
25	Magistrates	„ 10,800	„	2,70,000
4	Joint Magistrates and Deputy Collectors	„ 18,000	„	72,000
4	Joint Magistrates and Deputy Collectors	„ 12,000	„	48,000
11	Joint Magistrates and Deputy Collectors	„ 8,400	„	92,400
100			*Rs.*	19,57,400

The establishment his Lordship would propose would be as follows:—

26	Judges	at *Rs.* 27,000	*Rs.*	7,02,000
30	Magistrates and Collectors	„ 27,000	„	8,10,000
22	Joint Magistrates and Deputy Collectors	„ 12,000	„	2,64,000
21	Joint Magistrates and Deputy Collectors	„ 8,400	„	1,76,400
				19,52,400
	With a special allowance of *Rs.* 3,000 a year for the Judge and the Magistrate and Collector of the 24-Pergunnahs, on account of the expense of a residence at the Presidency			6,000
			Rs.	19,58,400

 18. This

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Letter from the Secretary to the Government of Bengal to C. Allen, Esq.
28 April 1854.

18. This scheme, the details of which are more fully shown in the tables annexed to the enclosed note, would practically recognise only three grades of salary, viz., 700 rupees a month, 1,000 rupees a month, and 2,250 rupees a month. The aggregate expense would be the same as at present, and in respect to details it is only necessary to observe that at Pubna and Noakolly, where the work is fully equal to that of an ordinary district, the office is raised from that of a joint magistrate and deputy collector on 18,000 to a magistrate and collector on 27,000, while on the other hand Maldah and Bogra, where the work is much less, are reduced from 18,000 rupees to 12,000 rupees a year. Supposing the Court of Directors to recruit the civil service, as they have been requested to do, so as to provide one assistant for each district, to the number of thirty-seven, a civilian under this scheme would obtain his first promotion in about five or six years after leaving college, he would rise to 1,000 rupees a month in about four years more, and at about 13 or 14 years' standing, when at the age of 33 or 34, and full of experience in every department of civil administration, he would have to take his choice either of the executive or judicial line, and there remain in ordinary course to the end of his career; and those selected for higher employment would hardly have had to serve in independent charge of a district in one department or the other for less than six or seven years.

19. To that part of the above scheme which goes to equalise the salaries of the judicial and executive chiefs of districts, an objection will perhaps be made, weak in itself, and more so as compared with the advantage of fixing a civilian's career at a comparatively early period of his service, but one which will carry weight to some minds accustomed to the present constitution of the service. This supposed objection is, that an appeal lies from the magistrate to the judge, and that the judge may frequently be a man of much less age and experience, as well as less ability, than the magistrate. As regards ability, matters will remain very much as they are at present, and in other respects his Lordship thinks that, apart from the general objection to appeals from one individual judgment to another individual judgment, it signifies little what may be the relative ages and general experience of the original and appellate judges, provided that it be the special business of the latter to weigh evidence and decide cases undisturbed by the distractions of executive detail. Moreover, his Lordship hopes that the time is not far distant when all criminal, as well as other judicial appeals will be heard before a bench of judges of whom the civilian judge will be only one of the members.

20. The Governor does not, however, press the immediate introduction of this change with the same urgency as he has pressed the union of the offices of magistrate and collector. It will be necessary to consider it well, and to refer it to other divisions of the Presidency. He begs leave, however, to recommend it to the early and favourable consideration of the Government of India.

21. The measures now suggested for improving the judicial branch of the administration will still be imperfect in his Lordship's opinion, unless some provision be made for counteracting the tendency which now exists to draw all the ablest men among the judges to be commissioners of revenue, a step which leads too frequently, but necessarily, to the judges of the Sudder Court being usually selected from among the commissioners of revenue. The only mode of counteracting this tendency is by raising the salaries of a certain number of the judges to an equality with the salaries of the commissioner, so that a man of ability, well qualified for the discharge of judicial duties, may be retained in the judicial branch without the loss of salary and promotion, in which such a measure on the part of the Government must now involve him.

22. Having already alluded to this subject in the Home Department of the Government of India, his Lordship will not dwell upon it now, but reserves it for the consideration of the Governor-General in Council.

I have, &c.,
(signed) *Cecil Beadon*,
Secretary to the Government of Bengal.

— No. 3. —

No. 3.
Note by the Secretary to the Government of Bengal.
3 Dec. 1853.

NOTE by the Secretary to the Government of *Bengal.*

Dated 3 December, 1853.

THE Most Noble the Governor having been satisfied of the disadvantages attending the present constitution of the office of superintendent of police, and having recommended to the Government of India its abolition, and the retransfer of its duties to the revenue commissioners, the next question for consideration as respects the civil executive administration of these provinces, is that of reuniting the offices of magistrate and collector in one person.

Union of the office of magistrate and collector.

General control of Commissioners over all departments.

Employment of assistants in judicial as well as executive duties.

Equalisation of the salary of judges with that of magistrates and collectors.

General recasting of district, executive, and judicial salaries.

2. Previous to 1836, and for some time afterwards, the two offices were united in Bengal, as they are to this day in the North-western Provinces. In 1836 a committee was appointed to take into consideration the state of the police in these provinces, and among other measures they recommended that the offices of magistrate and collector should be separated.

The arguments used by the committee in support of this recommendation were the following:—

First.—That since the union of the office of magistrate with that of collector (it had formerly been joined with that of judge), the encouragement which had excited zeal and activity in the police, by making the office of magistrate the principal channel to distinction, had been transferred to the revenue department, and that the police had accordingly come to be considered a matter of secondary importance.

Second.—That when two functions are united in one officer, that portion of his duties is neglected in which the Government for the time being takes the least interest; and as the Government cannot wait for its revenue, the police consequently is, and then actually was, neglected.

Third.—That men of sufficient standing in the service to be magistrates and collectors are not so active as a superintending police officer ought to be, and that the joint magistrates were either not trusted by their superiors, or if trusted, would work much better on their own responsibility.

Fourth.—That in the permanently settled provinces, where the collector has little communication with the agricultural community but what renders him unpopular, the advantage that might be derived from the conjoined influence and greater experience, was counterbalanced by greater inconveniences.

Fifth.—The collectors are apt to call in the police to aid fiscal operations, and that therefore it is necessary that their proceeding should be checked by a separate authority in the district.

Sixth.—That by the separation of the two offices, the attention of each officer would be less distracted by conflicting duties; that each would be responsible for his own department; and that no idle or incompetent person could then be long tolerated in either situation.

3. The Governor of Bengal (Lord Auckland) addressing the Honourable Court of Directors, in 1837, on the subject, observed as follows: "The question of gradually separating the office of magistrate from the collectorships of the several districts of the Bengal presidency is now under my earnest deliberation. It is one of great difficulty, not merely on financial considerations, but with reference to the very doubtful points whether, in the present state of the covenanted service, a judge, a magistrate, and a collector, of adequate ability, could be allotted to each district in the Lower Provinces, until, at any rate, existing operations under the resumption laws be brought to a close; and secondly, whether, the small number of highly competent functionaries of grades below the judicial Bench being taken into account, the police would, on the whole, be benefited by a division of labour which would assign a large proportion

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of those best qualified to administer it with effect to the revenue branch of the service exclusively."

4. But, previous to this, the recommendation of the Committee had been acted on in special instances; the offices had been disunited as vacancies occurred, in Patna, Moorshedabad, Midnapore, Burdwan; and an intention was expressed of adopting the same course in other specified districts where the duties were particularly heavy, though the Government was entirely opposed to a precipitate change of system.

5. The Honourable Court replied to Lord Auckland's despatch in 1838, and observed as follows:—

"The merits of the question are well stated in the proceedings before us. In favour of the separation, is the increased attention to the duties now joined together, which it would render practicable. We do not find it alleged by you that the office of magistrate has been made subservient to that of collector, and we trust, that, in point of principle, the union of the two has not from experience been found liable to that fatal objection. It has, however, sometimes been regarded as an advantage, when the two offices were separate, that, in point of fact, their respective amlahs operated as a check on each other. Against these advantages have justly been set the objections, first, of increased expense, and secondly, of the inadequacy of the service to supply men of superior qualifications for exclusive employment in each of the two capacities. It may be added that a native establishment devoted altogether to the duties of police, and under the direction of a European officer solely occupied with the same duties, would be more apt, either from over zeal, or from corrupt motives, to harass the people by petty or unfounded charges, or by unnecessary summonses for attendance, than public servants connected with them by other relations also, and enabled to gain credit with their superiors for the exercise of other functions not of a vexatious nature. On the whole, we concur in the opinion to which Lord Auckland seems inclined, that there are not sufficient grounds for a general change of the established system (always in itself to be avoided unless the grounds for it be strong and unquestionable), but at the same time we admit that, under particular circumstances, the separation of the office of magistrate from that of collector may be found advisable, or even necessary, as you have already decided it to be, at Patna, Moorshedabad, Midnapore, and Burdwan."

6. About the same time the local Government, addressing the Sudder Court in reply to their report on the criminal administration for 1836, observed:—

"The Governor apprehends indeed that the Court have regarded the subject rather in the abstract, than with reference either to the general strength of the service or to the demands of other departments upon the agency at the command of Government. Under the old system, only two substantive officers, a judge and magistrate, and a collector, were required in each district, but whenever the magistracy is now separated from the collectorship, three must be supplied; and his Lordship considers it to be extremely doubtful whether, under the most favourable circumstances, three competent officers could be afforded to each of the 25 districts of the Lower Provinces, in addition to which the Court recommend that the magisterial and fiscal duties should be committed to separate hands in the subordinate districts of Pubna and Furreedpore. But whatever might be done in ordinary times, the efforts which are now being made for the improvement of the public resources from the land revenue, throughout the Lower Provinces, render it indispensable to the interests alike of the Government and of the community, that the department, upon the flourishing condition of which every measure of improvement, whether of the police or of civil justice, is absolutely dependent, should be administered, whilst such important operations are in progress, by none but highly efficient officers, and the due enforcement of the resumption laws, which had fallen into almost total abeyance, and which could be effected only by a division of labour, demands, at present, the services of not less than 12 very competent officers."

7. The opinion of the Lieutenant-Governor of the North-western Provinces, on the general question, as recorded in his proceedings in the Judicial Criminal Department, for the 2d quarter of 1837, was, that the union of the offices was beneficial to the happiness of the people and the efficiency of the public administration,

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nistration, and that the separation of the offices "tended to produce discord among the public functionaries, and a divided administration to the people, who are dragged different ways by the two authorities, and know not to which they can look for justice and protection; but that in an union of the offices, the knowledge which a collector necessarily has, or ought to have, of the people must greatly aid his efficiency in his capacity of magistrate."

8. Still the progress of separation went on gradually in the Lower Provinces, until, in 1845, matters stood as at present, that is to say, the magisterial and fiscal offices were disunited everywhere except in the three districts of Cuttack, and in the independent joint magistracies of Pubna, Malda, Bogra, Bullooah, Furreedpore, Bancoora, Baraset, and Chumparun. The salaries of the separated collectors have been uniformly fixed at 23,000 rupees a year, except in Bhaugulpore, Monghyr, and Beerbhoom, where they are 18,000 rupees. But the salaries of magistrates which it was intended at the time of separation should be in two grades, of 18,000 and 12,000 rupees, have been reduced by orders from home to 10,800 rupees.

9. The experience of the past 15 years has led many to the conclusion, that without gaining anything by the change,—for the isolated cases of effective police administration are not more numerous now than they were before,—we have reaped all the evils which Lord Auckland and the Court of Directors foresaw when yielding a reluctant assent to the separation of the two offices. We have suffered a grievous loss of power by maintaining a separate class of collectors, charged with special duties insufficient to occupy their time, and yet inhibited from rendering assistance to the other great branch of executive Government; and we have a class of magistrates overworked, underpaid, with limited experience, energetic and zealous, it is true, but commonly wanting in the discretion which is only gained by experience, and frequently so young as not to command the respect of either the native or European community, and to afford a plausible pretext for the vulgar objection urged against the Government of employing boy-magistrates.

10. The collection of the land revenue of these provinces and the duties connected with it, with a few exceptions here and there, has become a matter of such routine as not to furnish a sufficient quantity of suitable employment for a highly-paid collector, whose chief duty is the control and supervision of subordinates, while the mode in which the revenue is paid, that is to say, directly into the Government treasury at the Sudder station, without the intervention of a tahsildar or any intermediate officer, leaves the collector neither the means of becoming acquainted with the people of his district through others, nor any inducement to associate with, and become accessible to them himself. On the other hand, the personal influence which the collector undoubtedly possesses, and always must possess, especially among the zemindars of a district, and which, as an adjunct to the authority of the magistrate, might be made most useful to the State, is now in the majority of cases allowed to remain barren, and has occasionally, though I hope rarely, been used to thwart the proceedings of the magistrate.

11. Even if it were in the power of the Government to command the agency requisite for a thoroughly efficient though separate administration of land revenue and police, I should greatly question the wisdom of separating functions, the joint exercise of which, whatever may be said to the contrary, is in India not only not incompatible or objectionable, but positively conducive to the highest efficiency of administration in both departments; and in the absence of such agency, the wisdom of reverting to the old arrangement, which still subsists in the North-western Provinces and Cuttack, seems to me incontrovertible. Under the present system, our magistrates vary from eleven to five years' standing in the service. During that period, when between twenty-five and thirty-one years of age, they are charged with the preservation of peace and order, and with the security of life and property throughout large districts, the real representatives of the character and authority of Government in the eyes of the people, without any official superior at hand to control and guide them, or any but private and irresponsible advice to depend upon; and when at the age of thirty-one their experience is matured, and they have arrived at a period of life when the physical and intellectual powers are together in full vigour, they are transferred

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to another department of the service, for the special duties of which they have had little training, and that almost forgotten, and where their time is insufficiently occupied, and their energies rust until their turn comes for promotion to the judicial bench.

12. I do not understand how any weight could ever have been given to the argument for disuniting the offices of magistrate and collector, founded upon the presumption that collectors might call in the police to aid them in fiscal operations. Perhaps it is a sufficient answer to say that in the North-western Provinces, where the danger, if it be not altogether chimerical, is far more imminent than in Bengal, the union of the two offices is productive of no such mischievous result. But when the amount of every man's dues is known,—when the law provides ample process for their realisation,—and when the civil courts and an appeal to the local commissioner afford due security against abuse of power, even if there were any motive to resort to it, the apprehension of such abuse may have formed a pretext, but could never have been a real reason, for the measure.

13. The chief duties of covenanted English officers in this country are those of superintendence and control. Such duties are best and most effectually exercised for the common weal when centred in one authority within a given tract of country. The principle which holds good of a local governor in the presidency he governs, holds equally good of a commissioner within his division, and of a magistrate and collector (or, as he would more properly be called, a deputy commissioner) within his district; and the principle is capable of further advantageous extension to local subdivisions of convenient extent, like tahsildaries in the North-western Provinces, or those under deputy magistrates and collectors in Bengal.

14. The only separation of functions which is really desirable is that of the executive and judicial, the one being a check upon the other; and if the office of magistrate and collector be reconstituted on its former footing, I think it will have to be considered whether the powers of a criminal judge now vested in the magistrate, extending to three years' imprisonment with labour in irons, might not be properly curtailed,—whether the magistrates should not be required to make over the greater portion of their judicial duties to qualified subordinates, devoting their own attention chiefly to police matters and the general executive management of their districts,—and whether the moonsiffs, under an improved and simplified code of civil procedure, might not be charged with the trial and decision of summary suits for arrears of rent.

15. If there should appear sufficient ground in the foregoing observations to justify and require a departure from the existing practice, and a return to the footing on which the executive administration of the Regulation Provinces under this Government stood in 1836, aided materially by other improvements subsequently introduced, and now in the course of introduction, I think the opportunity may well be taken to revise the whole system by which promotion in the civil service is now regulated, and to remove, as far as possible and desirable, the reproach which now attaches to the Government on account of the frequent change of officers from one office to another, and from one district to another, and to set apart more completely than at present a portion of the service for the exclusive discharge of judicial duties.

16. It has always appeared to me that the further we have departed from the Indian system of centring all executive control within a given tract of country in the hands of one man, the more we have weakened our hands, and frittered away the administrative force which, centred in one responsible officer, can be far better and more effectually exercised for the protection and improvement of society than when, under the specious argument of a division of labour, the same force is divided between two independent and frequently antagonistic departments.

17. It seems to me that the true theory of Indian government, such as has been partially followed with success in the North-western Provinces, and still more completely in our Non-regulation Districts, is the entire subjection of every civil officer in a division to the commissioner at the head of it, and the entire subjection of every officer in a district to its executive chief. Even as regards judicial

judicial officers, I am satisfied that a great advantage is gained by placing them in all matters of an executive nature directly under the commissioner, just as the Sudder Court in its executive capacity is subordinate to the local Government, and leaving them independent only as regards their judicial decisions.

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18. Applying this view to the constitution of the civil service in our Regulation Provinces, it strikes me that the most effective plan of administration would be to equalise the salaries of the chief executive and judicial officers, and place both in subordination to the commissioner. At the head of every district there should be a chief executive officer, designated by the title either of magistrate and collector, or by any other more suitable appellation. He should have entire control over every department of the executive in his district, revenue, minor criminal justice, police, registration, public works, education, jail, &c. He should have under him a sufficient staff of covenanted and uncovenanted assistants, and he should be directly and entirely responsible to the commissioner. In one or more districts there should also be an European judge, on the same salary as that of a magistrate and collector, charged with the superintendence and administration of civil and criminal justice as at present, responsible to the Sudder Court, but liable to have his executive arrangements inspected, and his supervision over the inferior judges controlled by the commissioner. In every district there should be one or more covenanted assistants (including joint-magistrates and deputy-collectors), who should be at the disposal of the executive chief, but available for employment under the judge for two days in the week, either as assessors or assistant judges, in the trial of cases before a full mofussil bench, or in the trial of small original suits within the jurisdiction of a moonsiff. The assistants would thus gain experience in every department both judicial and executive; they would rise as qualified to the superior grade, equivalent to that of joint-magistrate and deputy-collector, and at the end of ten or twelve years' apprenticeship they would be eligible for independent and responsible employment, as either judicial or executive head of a district. They would in this manner be qualified by previous experience for either department, and the choice would be made by Government with due advertence to the qualifications of each officer. Those who showed a preference and a fitness for judicial employ would become judges, and those who preferred executive duty would become magistrates and collectors.

19. The destination and employment of an officer being thus once fixed, there would be no further change, either from office to office or from district to district, until a civil servant became qualified by standing for a commissionership, and consequently the average time during which the executive and judicial administration of each district remained in the same hands would be about 10 or 12 years, instead of less than half that time as at present. It is probable that commissioners would ordinarily be selected from among those who had taken the executive line of the service; but the power of the Government to select a commissioner from among the judges, should by no means be restricted. So in like manner the selection of judges for the Sudder Court would ordinarily be from among those who had followed the judicial line of the service; but it would be of most mischievous effect to tie the hands of Government, and prevent it from selecting a man of great ability for the Sudder Bench from among the officers of the executive branch. The early training of civilians in all departments will afford the technical experience necessary for the discharge of high functions in either department, and individual ability will supply the rest.

20. It may be said, that to place the judicial line on perfect equality with the executive line, there should be four or five judges on salaries equal to the salary of a commissioner, with which judges of the highest ability and reputation, who would otherwise aspire to a commissionership, might be rewarded. But the functions of a commissioner are of such high importance, and it is so paramount an object of Government to obtain the services of the ablest men for those situations, that the creation of an inducement to prevent judicial officers from taking commissionerships, seems to me a measure of doubtful expediency. It must also be remembered that the number of judges being smaller than the

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number of magistrates and collectors (26 to 30), the number of prizes at the head of the judicial branch ought to be less in proportion.

21. Supposing it be determined that the salaries of the judges on the one hand, and the magistrates and collectors on the other, shall be equalised, it will then have to be considered what the amount of their salaries is to be. And this question will have to be considered with reference to what is proper and what is practicable; for, on the one hand, I do not apprehend that any increase in the expense of the present establishment will be thought of, and on the other, it certainly is advisable to fix and maintain the salaries of the officers, vested with the highest judicial and executive authority in each district, at as high a rate as the present limits of expenditure will allow. After much consideration, I have come to the conclusion that the salary now given to magistrates and collectors in the North-western Provinces, is the best and most convenient standard to take; and I think that this standard, combined with a re-arrangement of the inferior salaries, will be found on the whole to attain in the least objectionable manner the objects above referred to, without any positive material deduction in numbers, and with a very material increase in efficiency, by means of a better disposition of the force at command. I am anxious at the same time to get rid of the intermediate scale of 18,000 rupees a year, now attached to a few offices under this Government. This intermediate scale gives rise to much inconvenience in practice, for every member of the service who enjoys a salary of 1,000 rupees a month expects to be promoted in his turn to a salary of 1,500 rupees a month and again to a salary of 2,000 rupees a month; and as there are only seven offices on the intermediate salary, and promotion goes at the rate of about seven steps a year, it follows that under ordinary circumstances no man can remain in one of these offices for more than a year, and the inconvenience can only be remedied, and that not always, by making a nominal transfer to the substantive appointment, and keeping a junior officer acting in it.

22. The present establishment is as follows:—

			Rs.		*Rs.*
26	Judges	at	30,000	-	7,80,000
3	Magistrates and Collectors	„	28,000	-	84,000
23	Collectors	„	23,000	-	5,29,000
3	Collectors	„	18,000	-	54,000
1	Magistrate	„	28,000	-	28,000
25	Magistrates	„	10,800	-	2,70,000
4	Joint Magistrates and Deputy Collectors	„	18,000	-	72,000
4	Joint Magistrates and Deputy Collectors	„	12,000	-	48,000
11	Joint Magistrates and Deputy Collectors	„	8,400	-	92,400
100				*Rs.*	19,57,400

The establishment I should propose would be as follows:—

			Rs.		*Rs.*
26	Judges	at	27,000	-	7,02,000
30	Magistrates and Collectors	„	27,000	-	8,10,000
22	Joint Magistrates and Deputy Collectors	„	12,000	-	2,64,000
21	Joint Magistrates and Deputy Collectors	„	8,400	-	1,76,400
					19,52,400
	With a special allowance of 3,000 rupees a year for the Judge, and the Magistrate and Collector of the 24-Pergunnahs, on account of the expense of a residence at the Presidency				6,000
				Rs.	19,58,400

23. This scheme, the details of which are more fully shown in the annexed table, would practically recognise only three grades of salary; viz., 700 rupees a month, 1,000 rupees a month, and 2,250 rupees a month. The aggregate expense would be the same as at present; and in respect to details, it is only necessary to observe, that at Pubna and Noakally, where the work is fully equal to

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to that of an ordinary district, the office is raised from that of a joint magistrate and deputy collector on 18,000 rupees to a magistrate and collector on 27,000 rupees; while, on the other hand, Maldah and Bograh, where the work is much less, are reduced from 18,000 rupees to 12,000 rupees a year. Supposing the Court of Directors to recruit the civil service, as they have been requested to do, so as to provide one assistant for each district, to the number of 37, a civilian under this scheme would obtain his first promotion in about five or six years after leaving college; he would rise to 1,200 rupees a month in about four years more; and at about 13 or 14 years' standing, when at the age of 33 or 34, and full of experience in every department of civil administration, he would have to take his choice either of the executive or judicial line, and there remain in ordinary course to the end of his career: and those selected for higher employment would hardly have had to serve in independent charge of a district, in one department or the other, for less than six or seven years.

24. To that part of the above scheme which goes to equalise the salaries of the judicial and executive chiefs of districts, an objection will doubtless be made, weak I think in itself, and more so as compared with the advantage of fixing a civilian's career at a comparatively early period of his service, but one which will carry weight to some minds accustomed to the present constitution of the service. I mean, that an appeal lies from the magistrate to the judge, and that the judge may frequently be a man of much less age and experience, as well as less ability, than the magistrate. As regards ability, matters will remain very much as they are at present; and in other respects I think that, apart from the general objection to appeals from one individual judgment to another individual judgment, it signifies little what may be the relative ages and general experience of the original and appellate judges, provided that it be the special business of the latter to weigh evidence and decide cases, undisturbed by the distractions of executive detail. Moreover, I hope that the time is not far distant when all criminal, as well as other judicial appeals will be held before a bench of judges, of whom the civilian judge will be only one of the members.

(signed) *Cecil Beadon.*

Dated the 3d December 1853.

(True copy.)
(signed) *Hodgson Pratt,*
Under Secretary to Government of Bengal.

STATEMENT showing the Salaries of all Judges, Magistrates, Collectors, and Joint Magistrates and Deputy Collectors, in the Lower Provinces, on the 1st May 1836 and 1st May 1853.

NAME or DISTRICT.	SALARIES ON THE 1st MAY 1836. Judge.	Magistrate.	Collector.	Joint Magistrate and Deputy Collector, 1st Grade.	Joint Magistrate and Deputy Collector, 2d Grade.	SALARIES ON THE 1st MAY 1853. Judges.	Collectors.	Magistrates.	Joint Magistrate and Deputy Collector, 1st Grade.	Joint Magistrate and Deputy Collector, 2d Grade.
	Rs. a.	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*	*Rs. a.*
Sarun	30,000 –	30,000 –	– – –	12,000 –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	– – –
Champarun	– – –	– – – – –	– – –	– – –	– – –	– – –	– – – – –	– – –	12,000 –	– – –
Shahabad	30,000 –	24,000 –	– – –	12,000 –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	– – –
Patna	36,000 –	24,624 14	– – –	24,000 –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Behar	30,000 –	28,000 –	– – –	35,000 –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	– – –
Tirhoot	30,000 –	32,634 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Bhaugulpore	36,000 –	28,000 –	– – –	– – –	8,400 –	30,000 –	18,000 –	10,800 –	– – –	8,400 –
Moonghyr	– – –	– – – – –	– – –	18,000 –	– – –	– – –	18,000 –	10,800 –	– – –	– – –
Purneah	30,000 –	28,000 –	– – –	– – –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	– – –
Dinagepore	30,000 –	28,000 –	– – –	– – –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Maldah	– – –	– – – – –	– – –	18,000 –	– – –	– – –	– – – – –	– – –	18,000 –	– – –
Rajshahye	30,000 –	23,000 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Pubna	– – –	– – – – –	– – –	18,000 –	– – –	– – –	– – – – –	– – –	18,000 –	– – –
Rungpore	30,000 –	12,000 –	26,246 –	– – –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Bograh	– – –	– – – – –	– – –	18,000 –	– – –	– – –	– – – – –	– – –	18,000 –	– – –
Dacca	41,800 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Furreedpore	– – –	– – – – –	– – –	12,000 –	– – –	– – –	– – – – –	– – –	12,000 –	– – –
Mymensing	30,000 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000	10,800 –	– – –	8,400 –
Sylhet	36,000 –	24,000 –	– – –	– – –	8,400 –	30,000 –	23,000	10,800 –	– – –	– – –
Tipperah	30,000 –	28,000 –	– – –	12,000 –	– – –	30,000 –	23,000	10,800 –	– – –	– – –
Bullooah	– – –	– – – – –	– – –	18,000 –	– – –	– – –	– – – – –	– – –	18,000 –	– – –
Chittagong	36,575 –	30,000 –	– – –	12,000 –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Backergunge	30,000 –	24,000 –	– – –	– – –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Jessore	30,000 –	28,000 –	– – –	– – –	8,400 –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Moorshedabad	30,000 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000 4	10,800 –	– – –	8,400 –
Nuddea	36,000 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
24-Pergunnahs	41,800 –	28,000 –	33,600 –	– – –	– – –	30,000 –	23,000 –	28,000 –	– – –	8,400 –
Calcutta	– – –	– – – – –	– – –	– – –	– – –	– – –	23,000 –	– – –	– – –	– – –
Baraset	– – –	– – – – –	– – –	12,000 –	– – –	– – –	– – – – –	– – –	12'000 –	– – –
Beerbhoom	36,550 –	– – – – –	32,400 –	12,000 –	– – –	30,000 –	18,000 –	10,800 –	– – –	– – –
Bancoorah	– – –	– – – – –	– – –	12,000 –	– – –	30,000 –	– – – – –	– – –	12,000 –	– – –
Burdwan	36,575 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	8,400 –
Hooghly	36,000 –	12,000 –	25,944 –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Howrah	– – –	– – – – –	– – –	– – –	– – –	– – –	– – – – –	10,800 –	– – –	– – –
Midnapore	30,000 –	24,000 –	– – –	12,000 –	– – –	30,000 –	23,000 –	10,800 –	– – –	– – –
Cuttack	30,000 –	30,000 –	– – –	12,000 –	8,400 –	30,000 –	28,000 –	– – –	– – –	8,400 –
Balasore	– – –	30,000 –	– – –	– – –	– – –	– – –	28,000 –	– – –	– – –	– – –
Pooree	– – –	37,620 –	– – –	– – –	– – –	– – –	28,000 –	– – –	– – –	– – –
TOTAL	8,23,300 –	6,71,878 14	1,18,190 –	3,65,000 –	84,000 –	7,80,000 –	6,67,000 –	2,98,000 –	1,20,000 0	92,400 –

25 Judges	8,23,300 –	26 Judges	7,80,000 –
26 Magte. and Collr.	6,71,878 14	29 Collectors	6,67,000 –
4 Collectors	1,18,190 –	26 Magistrates	2,98,000 –
27 J. M. and D. C. (1)	3,65,000 –	8 J. M. and D. C. (1)	1,20,000 –
10 J. M. and D. C. (2)	84,000 –	11 J. M. and D. C. (2)	92,400 –
GRAND TOTAL 92	20,62,368 14	100	19,57,400 –

No. 3.
Note by the Secretary to the Government of Bengal.
3 Dec. 1853

STATEMENT showing the SALARIES proposed to be assigned to Judges, Magistrates, and Collectors, and Joint Magistrates and Deputy-Collectors, in the Lower Provinces.

NAME OF DISTRICT.	SALARIES AS PROPOSED.							
	Judge.		Magistrate and Collector.		Joint Magistrate and Deputy-Collector, 1st Grade.		Joint Magistrate and Deputy-Collector, 2d Grade.	
	Rs.	*a.*	*Rs.*	*a.*	*Rs.*	*a.*	*Rs.*	*a.*
Sarun	27,000	–	27,000	–	12,000	–	—	
Chumparun	-	-	-	-	12,000	–	—	
Shahabad	27,000	–	27,000	–	12,000	–	—	
Patna	27,000	–	27,000	–	12,000	–	—	
Behar	27,000	–	27,000	–	12,000	–	—	
Tirhoot	27,000	–	27,000	–	12,000	–	—	
Bhaugulpore	27,000	–	27,000	–	-	-	8,400	–
Moonghyr	-	-	27,000	–	-	-	8,400	–
Purneah	27,000	–	27,000	–	-	-	8,400	–
Dinageporee	27,000	–	27,000	–	12,000	–	—	
Maldah	-	-	-	-	12,000	–	8,400	–
Rajshahye	27,000	–	27,000	–	-	-	8,400	–
Pubna	-	-	27,000	–	-	-	8,400	–
Rungpore	27,000	–	27,000	–	12,000	–	—	
Bograh	-	-	-	-	12,000	–	8,400	–
Dacca	27,000	–	27,000	–	12,000	–	—	
Furreedpore	-	-	-	-	12,000	–	8,400	–
Mymensing	27,000	–	27,000	–	-	-	8,400	–
Sylhet	27,000	–	27,000	–	12,000	–	—	
Tipperah	27,000	–	27,000	–	-	-	8,400	–
Bullooah	-	-	27,000	–	-	-	8,400	–
Chittagong	27,000	–	27,000	–	12,000	–	—	
Backergunge	27,000	–	27,000	–	-	-	8,400	–
Jessore	27,000	–	27,000	–	-	-	8,400	–
Moorshedabad	27,000	–	27,000	–	12,000	–	—	
Nuddea	27,000	–	27,000	–	-	-	8,400	–
24-Pergunnahs	30,000	–	30,000	–	12,000	–	8,400	–
Calcutta	-	-	-	-	12,000	–	—	
Baraset	-	-	-	-	12,000	–	—	
Beerbhoom	27,000	–	27,000	–	-	-	8,400	–
Bancoorah	27,000	–	-	-	12,000	–	8,400	–
Burdwan	27,000	–	27,000	–	12,000	–	—	
Hooghly	27,000	–	27,000	–	-	-	8,400	–
Howrah	-	-	-	-	12,000	–	—	
Midnapore	27,000	–	27,000	–	12,000	–	—	
Cuttack	27,000	–	27,000	–	-	-	8,400	–
Balasore	-	-	27,000	–	-	-	8,400	–
Pooree	-	-	27,000	–	-	-	8,400	–
TOTAL	7,05,000	–	8,13,000	–	2,64,000	–	1,76,400	–

26	Judges		7,05,000 –
30	Magistrates and Coll.		8,13,000 –
22	Jt. Magt. & Dy. Coll.	(1)	2,64,000 –
21	Jt. Magt. & Dy. Coll.	(2)	1,76,400 –
GRAND TOTAL	99		19,58,400 –

(True Copies.)

(signed) *Hodgson Pratt,*
Under Secy. to the Govt. of Bengal.

No. 4.
Minute by the Hon. Mr. Grant.
23 Nov. 1854.

— No. 4. —

MINUTE by the Honourable Mr. *Grant*.

PROPOSED Reorganisation of the System of Civil Administration in *Bengal*, including the Reunion of the Offices of Magistrate and Collector.

Dated the 23d November 1854.

1. I HAVE given the difficult questions raised by this reference all the consideration which their importance and the quarter from which they emanate demand.

2. It is proposed to unite in Bengal the offices of magistrate and collector. But this is proposed only as one step (though one which should be immediately taken) of a series of functional changes to be afterwards introduced.

3. I will address myself first to the more immediate question.

4. In the reference from the Bengal Government, the system under which the office of collector is united with that of magistrate in the same person is treated of as having been formerly the prevalent system of Bengal. But that system can hardly be said to have existed in Bengal at any time in any other form than in that of a short experiment, which, when judged of after the experience of a few years, was pronounced to have failed, and was therefore abandoned. The offices were united, I think, in 1830 or 1831; and in 1836 the police committee sat, which reported against the union. The last system, before the present system, which existed in Bengal long enough to be considered as a settled system, was that established by Lord Cornwallis; wherein the offices of magistrate and civil judge were united in the same person. So far as that union combined the function of a civil and criminal judge, it was, I think, not merely unobjectionable in principle, but practically the best arrangement that could be made. In so far as it combined with the functions of a criminal judge the duty of a superintendent of police and public prosecutor, it was, I think, objectionable in principle; and the practical objections to it were greatly aggravated by the course of subsequent legislation, which raised the judicial powers of a magistrate six times higher than they were in the days of Lord Cornwallis. But this objection of principle has not been removed by any change that has since been made, and will not be removed by any change now recommended to be made.

5. In my opinion, it is generally worth while to make a change of system, when that change removes material faults of principle, in what affects the foundations of a good administration. But I must confess myself to be slow to be convinced of the expediency of changes of system, which affect the outside and the form of things, but leave essential errors exactly where they were. In discussing a question of this nature 16 years ago, the Governor-General of that day, Lord Auckland, recorded a remark which struck me forcibly when I read it at the time, and which has ever since been present to my mind, and operative upon my judgment in considering public questions of this nature. Speaking of a scheme of that day, which had been recommended by the highest authority at the Presidency, and which, by a mere transfer of duties from one authority to another, was expected by its promoters to do great things, Lord Auckland wrote thus from the Upper Provinces:—

"I may frankly avow that I have come to the consideration of this proposal with but little prepossession in its favour, for I am deeply impressed with the feeling that there has been, with successive governments of India, too ready a disposition to adopt extensive changes of system in cases only requiring something of administrative reform. Under frequent changes of this kind, no system is fairly tried; the confidence of the people is shaken, and they become utterly at a loss to know to what authorities or to what tribunals they are to look with consistent respect. We have a very limited number of trustworthy agents; we have a vast number of important and responsible situations; we must be sometimes disappointed in the efficiency and even in the proper conduct of our officers. Yet I would not, upon occasional instances of such disappointment, be hasty

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hasty to condemn our present means of enforcing a due performance of public duties, or to look to new classes of agency; whilst, however, I avow this ground of prepossession against the plan proposed, I trust that I shall not be the less disposed candidly to examine it." *

6. In 1836, with the offices of collector and magistrate united, the police of Bengal was felt to be amiss. Instead of "any administrative reform," which, going to the real root of the evil, would have corrected or alleviated it, what was done was, in the very spirit which Lord Auckland afterwards characterised in the passage I have quoted above, to place the two offices each in separate hands; after which change of system, of course, the police remained much what it was before. But because the disunion of the offices has done no good or little good to the police, have we any warrant for presuming that the reunion of the offices would do it any good? It is very true that we are pressed with the sense of police affairs in Bengal being amiss now. But what is the root of the evil? No one denies that police affairs in Bengal will continue amiss, till an adequate constabulary force and trusty native officials in the Thannas are provided for it; till Bengal shall be put on an equal footing in this respect with the rest of India. Now no change of names, no shifting of offices, will have any tendency to increase the constabulary force, or to give Bengal trusty native officials in the Thannas. What assurance then have we that, if these two offices are reunited to-morrow, another police committee, sitting six years hence, and pressed (as it will assuredly be, unless some very different measures are taken) with a sense of police affairs being amiss in Bengal, will not repeat what, under precisely the same circumstances, the committee of 1836 did, and so drive the Government to undo all again? The words of the Honourable Court, quoted in the Bengal Secretary's note (applying to the change made in 1836—the remark that a general change of established system is always in itself to be avoided, unless the grounds for it be strong and unquestionable), are as applicable to the change the secretary is supporting, as they were to the change he is objecting to. Both the union and disunion of the offices in question are surface changes of system; neither measure affects the root of the evil.

7. Thinking as I do upon this question, it is incumbent upon me honestly to state my opinion, because I observe, that, since the Bengal Government first proposed the reunion of these offices, the project has been strongly relied upon by the Lieutenant-Governor of Bengal, in addressing an assembly of dissatisfied indigo planters, as being a measure of great practical reform. I am convinced that the hopes thus felt by the Lieutenant-Governor, and thus raised by him in the breasts of the indigo planters, will be disappointed; and I wish to have no hand in the disappointment. I am very sure that if "Boy-magistrates lacking experience" be a good cry now, "Sexagenarian magistrates lacking capacity to rise to higher office" will be as good a cry, any day when occasion offers.

8. I do not mean to say that there is not justice in the objection to the inexperience of some of our magistrates, under the present system. But I deny that this objection is in any way an objection to the principle of the disunion of fiscal and police powers. It is an objection only to the strange and indefensible method in which the Government of 1836 set about the execution of that principle. One office, that of a collector in Bengal, generally and naturally has comparatively easy and light work; the other office, that of magistrate in Bengal, generally and naturally has comparatively difficult and heavy work: in one office a little experience is sufficient for all purposes; in the other considerable experience is indispensable for thorough efficiency. Having to allot these offices between an experienced officer on high pay, and an inexperienced officer on low pay, at a moment when unfortunately there happened to be a peculiar and temporary pressure in the Revenue Department, the Government of the day fell into the permanent error of allotting the easy and light duty, requiring moderate experience, to the experienced man with high pay; and the difficult and heavy

* See Governor-General's minute, 10th October 1838; Judicial Consultation, 5th November, No. 2. See also Honourable Court's letter in reply, of 24th December 1838, in which the Honourable Court say, "His Lordship has stated an opinion, which we have had frequent occasion to convey to you, when he says, &c." The Honourable Court then cite part of the passage cited in the text.

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heavy duty, requiring long experience, to the inexperienced man with low pay. Necessarily, under such a system, as a man becomes experienced he gets promoted out of the office for which his experience has qualified him. But is it fair, when any magistrate errs from inexperience, to attribute the evil to the principle of the division of labour (a principle not usually called in question), instead of to the glaring error of the manner in which that principle, in this instance, has been put in force?

9. I have never heard a practical objection to the present system, which would not be avoided immediately and certainly, by the simple process of transposing the salaries of the two offices, of course with due regard to the public interests in making the appointments to each class of office.

10. When this question was before the Government of India on the last occasion, I remember that Mr. Ross (though I have not seen his minute since) recorded his opinion that, instead of having in every district, as before, one higher paid* and one lower paid† officer, each having both fiscal and magisterial duty, and one being in both capacities subordinate to the other; and instead of having in every district, as now, one higher-paid collector, and one lower-paid magistrate; there should be in each district two officers, one a collector, and the other a magistrate, of equal rank and on equal pay,‡ each exclusively engaged upon his own proper duty. A modification of the present system of separate officers, based upon this principle, is what, if it depended upon myself, I would introduce to-morrow. I believe such a plan to be sound in principle; and taking into consideration all the specialties concerning the civil service in this country, with reference to which I admit that every system in India must be judged, I believe that it would be found extremely convenient in practice. I do not think that the principle of uniting fiscal and police functions, *in Bengal at least*, is sound in principle; and after all the consideration I can give the measure, I fear that there will be found in Bengal much practical difficulty, not in working it agreeably to the members of the service, but in working it so as not to be injurious to the administration of the provinces.

11. On the point of principle I have only to observe, that those specialties which, in other parts of India, it is by many maintained, justify the seemingly unpropitious union of the powers of a publican with those of a magistrate and judge, do not in any degree exist in Bengal. A collector in Bengal neither has, nor ought to have, influence by reason of his office in his district. If the revenue is paid, he must take it; if it is not paid, he must advertise for sale. As the judge in summary suits for rent between Zemindars and Ryots, any attempt to acquire influence would be criminal. His miscellaneous duties are of such a nature as would give no man influence anywhere. As guardian of wards and maker of partitions, he acts only occasionally and upon individuals. He rarely makes a settlement, and never makes one of any importance. I do not, therefore, see how by his influence he can benefit the police of his district. On the other hand, I do not think that those general and obvious objections to the union of fiscal, police, and judicial powers in the same hands, which are admitted to have weight, and which rule the practice in all the well-governed countries of the West, are inapplicable in any part of India. At this moment, in the Madras provinces, an inquiry is on foot into the truth of a charge that has been made formally in Parliament, to the effect that in those provinces, where magisterial and fiscal power are in the same hand, the Government revenue is systematically raised by the use of torture inflicted by the native officers vested with these double powers. I trust that the charge, in the main, will be disproved; but I myself heard, when I was in the South of India, some such stories as would naturally have given rise to the charge. I myself heard what makes me very glad that the fact is to undergo inquiry. Now, no one can deny that, under the Bengal system, no such charge could stand a moment. Every one knows that, in Bengal, police peons and darogahs often torture prisoners for police purposes; but no one for the last 70 years has ever suspected that a rupee of revenue was ever raised in Bengal by the help of torture. This is one of the views in which, I submit, the smoothness and silence with which public affairs go on when all power

* Say, Rs. 2,000, or Rs. 2,250. † Say, Rs. 1,000. ‡ Say, Rs. 1,500.

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power in all departments is centred in the hands of one train of officials, cannot be regarded as good for the people, however agreeable they may be to the administrator.

On the point of practical working, I think there is much requiring to be considered by those who expect that this union of offices will give us an improved magisterial administration in our Bengal districts.

12. In the first place, experience is against the assumption; the experiment has been tried in Bengal, and has failed. The police presents no difficulty in any part of India, excepting these permanently settled provinces, where the wealth of the people makes a style of protection requisite which the State does not afford them. In the North-western Provinces the magisterial work is light. In Bombay I suppose it is the same. In Madras it is lighter still. The experience of other parts of India, therefore, is beside the question. Now, as a simple question of fact, I do not think it will be denied that our magistrates in Bengal now, call them boy-magistrates or what we will, are generally more zealous, laborious, and efficient magistrates, and often more capable, than the collectors and magistrates of twenty years ago, who were put to flight by the result of the inquiries of the police committee.

13. In the next place, there seems reason to fear no better result now. It is not probably denied that a better man is required to manage two independent courses of business, than is required to manage one course of business; and it is not probably denied, that an incapable man at the head of two departments in a district, is a much greater evil than an incapable man in charge of only one of those departments. Now I can answer for it, that when I was connected with the Bengal Government fully one-fourth part of the collectors were gentlemen who would have been unfit to have magisterial charge of their districts, and wholly incapable of the double charge. Nevertheless, most of that number did moderately well as mere collectors. Of the rest, there were, I think, several who had good reputations as collectors, and of whom I have no doubt some have since done well as judges, who, for want of youth, activity, or energy, would have made decidedly worse magistrates than the younger men in actual charge of the magistracies. Here is a difficulty that cannot be shirked; it must be met in face. How is it intended to meet it, under the proposed union of offices? Are we to have a fourth part, a third part, or a half of all our districts, in every department, laid at the feet of men of a certain standing, but not qualified for so onerous a charge; or are we to have in so many districts the old man and the young man, both in one and the same line of official subordination, the young man at the top, and the old man, until the expiration of his 35th year of service, at the bottom? This of the two is the better way of getting over the difficulty; but it seems to me that it would be better still not to rear up the difficulty at all. I fail to see the practical object for which it is thought worth while to encounter this difficulty. If the present evil be that some given magistrates are too young, that evil will not be avoided by giving them older men for their deputies, and making them boy-collectors as well as boy-magistrates. Move them about as you will, there is but the same number of older men, and the same number of younger men, to deal with.

14. On these grounds I have felt myself unable to support the proposed union of offices. I am bound in candour to confess, that, when I first took the subject into consideration, the proposed measure appeared to me to be one from which, though little good was to be expected, little harm was to be feared. After close attention, the good has vanished, and the harm has taken a substantial form in my view. This having been the result of much reflection on this important topic, though I am in a minority, I should be wrong not to place, with all deference to better judgments, my conclusion on record.

15. I will now revert to the remaining part of the scheme which has been sketched by the Bengal Government.

16. The plan proposed is to have in every district two, and only two, chief officers; one to be charged with all business relating to revenue, police, minor criminal judicature, public works, and miscellaneous executive matters; the other to be the judge; both these chief officers to be subordinate to the commissioner of revenue and police of the division; and the offices of both to be

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of equal rank and emolument, the salary suggested being 27,000 rupees, which is the salary of a collector and magistrate in the North-western Provinces, and is between the present salary of a Bengal collector and that of a judge. The objects are to reduce the number of changes of appointment which an officer passes through in the course of his service; and to keep one man, generally speaking, after he has once mastered his work, either always to the executive line, or always to the judicial line, throughout the whole of his subsequent career. It is an important part of this scheme to create a higher grade of provincial judges, who may represent in the judicial line the grade of commissioners in the executive line.

17. There is something very fascinating in the great simplicity of this scheme, and in its excellent adaptation to the two ends in view. The idea of a grade of chief provincial judges appears to me admirable. I have long been convinced that, quite apart from any of the considerations which give it a place in the present scheme, any great improvement in the administration of justice will be impracticable till a new class of provincial chief judges, having new and high functions, is established. The abolition which the scheme involves of the present anomalous grade of independent joint magistrates and deputy collectors on 1,500 rupees a month will obviate a source of much unnecessary inconvenience. The separation of the two great lines of the service will be complete, even to the eye; and one of the handles for that sort of ignorant criticism which founds upon words and not things will be put out of the way.

18. But with all this, I know not how to overcome the objections I feel to parts of this scheme.

19. I have fully stated above what seem to me to be grave objections to the union of the offices of magistrate and collector. Those objections are not lessened by the higher rank to which it is proposed to raise the united offices.

20. According to my ideas, it ought to be our fixed intention, as soon as possible, to dissever wholly the functions of criminal judge from those of thief-catcher and public prosecutor, now combined in the office of magistrate. That seems to me to be indispensable as a step towards any great improvement in our criminal jurisprudence: and any change of system to be made meanwhile should be contrived, I think, with regard to this fundamental reform. But if this reform were effected, it seems clear that, with the proposed rank and salary, the magistrate and collector would be lifted very far above his proper degree in the scale of offices. The duties of a Bengal collectorate are not of a high order. As magistrate, after the change I contemplate, this officer will be merely the head of the police of a district, and the prosecutor of criminals before the judge. It strikes me that to raise such a functionary to a rank equal to that of a judge, who controls and hears appeals from every judicial officer in his district, who in the vast mass of cases is the Court of last resort, and from whom no appeal in any case whatever lies, except to the highest Court in the country, would be a mistake, and would certainly degrade the great office of judge.

21. Even with the magistrate's functions as they now are, the much greater importance of the office of judge, in a Bengal district, appears to me to demand the greater rank and emoluments at present attached to that office. When of two judicial authorities one has five times as much power as the other, and can reverse, with censure if he pleases, any order or judgment of that other, surely the one of these two authorities is set up as being plainly the superior of the other; and it seems to me that the salaries of the two offices should in reason have some correspondence with their relative positions.

22. We ought, in my opinion, to attract the soundest heads we can get to this office of judge, on which, in Bengal, as in all other wealthy and highly civilized countries, the prosperity of agriculture and commerce depends more than on any other single office. In thinking of this subject, we should think not merely of the fact of the wealth and civilisation of Bengal, but also of the cause of it,—the institution of private property in land. The reasons which have induced the wise English people to make their courts all in all, to convert their Exchequer into an ordinary tribunal of justice, and to make their "collectors" mere taxgatherers, have already operated to a notable extent in Bengal. I am all for progress in this direction. I protest against going backwards.

23. I speak

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23. I speak after much watching of the course which one Government after another inevitably falls into, in the matter of appointments, when I say that I am sure, if the proposed system were in force for a few years, it would be rare indeed to see a judge of a capacity not greatly below the average. It would be so difficult to get an officer fit to work a magistracy and collectorate, and the inconvenience to secretaries and lieutenant-governors, of having a bad officer in such a situation, would be so pressing, that the refuse of the service only would be made judges. The Government looks to the magistrate and collector; the people look to the judge.

24. I am unable to support that part of the scheme which would place the judge under the revenue and police commissioner. A great part of the business of a judge is to decide upon the cases, civil and criminal, in which the commissioner is a most anxious and, of course, often a prejudiced party. If a man is to be a judge at all, he should be independent. But the mere fact of his decisions not being appealable to the commissioner will not make him independent, if, in all other respects, or in any other respect, he is placed under the commissioner's superintendence and control. The same objection applies even more strongly to the subordinate native judges. The Sudder Court, as the body which best knows how the Lower Courts do their work, and as the only public body which is in a position to pass an impartial opinion upon that work, seems to me obviously the best authority to superintend all inferior judicial officers. I refer in the margin to the papers connected with a proposal made in 1838 to withdraw the power of control from the Sudder Court, which was negatived, for very conclusive reasons, by Lord Auckland, with the marked approbation of the Honourable Court;* also to the papers connected with a proposal made in 1836, similar to that now under discussion, for making over to the commissioners the superintendence and control of the judges; which was negatived by Lord Auckland's Government for reasons which are to me convincing.†

25. Having so freely remarked upon the very able scheme which has been recommended by the Bengal Government, it is but fair to submit to criticism, in a tangible form, the modifications which would make it suit the principles which I uphold. I will proceed, therefore, to sketch in full length the system which, upon the whole, seems to me the best.

26. To begin with the beginning. The crying evil of Bengal is its bad police. As I have said, the only remedy for this is an adequate constabulary force and trusty thannadars. This remedy is beyond the scope of the present question. I only mention it here to say that I am convinced that all thought expended upon projects of improved administration in Bengal, until this main want is supplied, will be little better than thought thrown away.

27. The great defect in the organisation of the district administration in Bengal is the want of all trusty officers in the interior of districts (such as are the tehsildars in all other parts of India) to inform the station officers of what is really going on, and to execute their orders faithfully. The only local officers in Bengal are the police thannadars, who, though better than they were, are notoriously bad. The great additional strength of civil officers that has been acquired of late years (I venture to say) has been made use of in the least useful of all possible ways; that is to say, in increasing the number of civil officers already congregated in sufficient numbers at the sudder stations. Thus the country at large has derived the least possible benefit from the immense and costly additions that have been made to its civil establishments in the shape of deputy collectors, deputy magistrates, and Abkaree superintendents. In one way only has any progress been made towards supplying the one grand want of the Bengal system, namely, in the establishment here and there, in excessively large districts, of a small number of subdivisions, presided over by an assistant to the magistrate,

* Judicial Consultation, 20th August 1838, No. 1, &c.; Judicial Consultation, 22nd October 1838, No. 5, &c.; Judicial Consultation, 5th November 1838, No. 1, &c.; Honourable Court's Judicial Despatch, 5th June 1839.

† Judicial Consultation, 21st June 1836, No. 14, &c.; Judicial Consultation, 13th September 1836, No. 4, &c.

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magistrate, or a deputy magistrate. I would work out this one sound improvement to the utmost.

28. Every district is already divided into several moonsiffships. I would give every moonsiff criminal judicial powers to a certain extent; say, up to three months' imprisonment. He should receive his cases directly from the thannadar. The number of moonsiffs would require to be increased, but not very largely, I believe.

29. Every district is already divided also into thannas, but these thannas are often very large. I think no thanna station should be more than ten or twelve miles from its neighbour on any side. A certain number of these (small) thannas, say, eight or nine, would form a subdivision, in which there should be, say, three head thannadars, the rest being naib thannadars under a head thannadar.

30. Every district should be wholly cut up into subdivisions. Over every subdivision there should be either an assistant or an officer, such as is now called a deputy magistrate, to superintend the thannadars, and to control the police of the subdivision, but without any judicial power whatsoever. These appointments should be reserved for the future as rewards for the best conducted of the thannadars. If we make this service as hopeful as the native judicial service, why should we not have as good native deputy magistrates as we now have principal sudder ameens, and as good thannadars as we now have moonsiffs? If we do not make the service hopeful, what right have we to expect it to be good?

31. Sudder ameens are now located at the sudder stations, exactly where respectable officers of their sort are least wanted. I would increase their number, and place one in each subdivision, with jurisdiction over the whole subdivision, and with criminal judicial powers to a certain extent, say, up to one year. They should receive their cases directly from the subdivision officers, or from one of the thannadars acting under the orders of those officers.

32. At the sudder station, as his head-quarters, I would place the officer now called magistrate, denuded of all criminal judicial powers whatsoever, and restricted to the duties of looking after the subdivision officers, and the thannadars and subordinate policemen, of discovering crime, and of prosecuting it in heavy cases to conviction. At the sudder station also would be tried by principal sudder ameens, assistants, joint magistrates, and deputy collectors, and judges (by collectors also, having powers for the purpose, if any collectors have time enough to spare), all the cases of too grave a nature to be tried by moonsiffs and sudder ameens in the thannas and subdivisions.

33. To carry out to the utmost the reversal of the old system, which I blame, of congregating all the respectable part of our strength at the sudder station, I would, wherever possible, throw off the principal sudder ameen, with divisional criminal powers, into the interior of the district. I believe there are few districts in Bengal which ought not to have two of these officers. Under such a system I believe we might save a judge or two, and several magistrates, with infinite convenience to the people in respect to civil as well as to criminal justice.

34. If any one, acquainted with the Mofussil, will endeavour to realise to himself the state of things such as it would be under the above system, and then to compare that with the existing state of things, in which nobody can be lawfully tried for stealing an egg, or for giving an impudent boy a cuff on the head, without coming in perhaps 70 or 100 miles, with all the witnesses, to the sudder station, I think he will admit that my plan would be an improvement. My system of criminal procedure would not be perfection; but it might be introduced in three months' time, with the greatest ease, and at a small expense. The existing system of criminal procedure, to speak of it in moderate language, is not like the system of a country administered by rational beings.

35. To the system of criminal procedure above sketched, or to some such system then, I would adapt the course of our covenanted civil servants.

36. I would make the assistants work at first in the departments of revenue, minor criminal justice, *and minor civil justice*. In these departments they would gain their first increase to 500 rupees. Afterwards they might either take charge of

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of a subdivision, or work on at the station, with higher powers in those three departments. At every station I would have an officer on 700 rupees of the grade now called a 2d grade joint magistrate and deputy collector, as the lieutenant of the magistrate, and of the collector; working under both, and ready to assume temporarily the place of either.

37. From that rank the civilian's promotion should be either to a magistracy (*i. e.* a chiefship of district police), or a collectorship. Though I think the rank and emoluments of these offices should be upon an equal footing, I do not think that the salaries should be at one unvarying rate. Young men will not rise to either of these offices till they have served several years. In either of them they will not get through the grade in less than 10 or 12 years. That is too long a time to keep promotion stagnant, if we wish to preserve zeal. I would, therefore, in this grade adopt a plan which has done well in the Punjab, that is to say, I would fix three rates of pay, having one third of the number at each rate. The rates should be 1,000 rupees, 1,500 rupees, and 2,000 rupees; promotion being by merit, unless where in favour of special cases of very old standing and good conduct. I am quite sure that if we want to maintain the needful stimulus, this is the system of payment to be adopted.

38. Under this arrangement I should hope to escape, in a great degree, the worst vice of our administration, the one vice which I am obliged to say seems to me to be now getting worse instead of getting better,—I mean the promotion of incompetent men to judgeships. On either of the two higher rates of pay, a man capable of doing his work as a collector, and incapable of performing fitly the duties of any higher office, might well be left, and I believe generally would be left, to work out the remainder of his service in this grade.

39. From both these offices I would promote the good men, and none others, to be judges. If any one objects that I make men judges who have never been judges before, I reply, that so must all judges be first made. But if any one objects that I make men judges who have not had the opportunities of acquiring, in the course of their previous training, the knowledge and practice best adapted to form a good judge in India, I affirm the contrary, and I join issue on that question. As the affirmative has been demonstrated over and over again by the greatest authorities on Indian subjects, I will not stop to argue it here. The real fact is, that whatever mofussil office an Indian civil servant is in, he begins doing essentially the work of a judge when he first quits college; and he never leaves off doing it till he takes his annuity.

40. From a judgeship the promotion should be either to a chief provincial judgeship, such as has been alluded to, or a commissionership; and from this point I would preserve strictly the judicial line uninterrupted. The chief provincial judges should look to the Sudder Court, the commissioners to the Board of Revenue.

41. The chief provincial judges would try, with a bench of two other judicial officers, all heavy civil and criminal cases, without appeal on points of fact. They would relieve the Sudder Court of many other appeals also; and with their help I believe the Sudder Court might well be reduced from five to three judges.

42. Such is my scheme, which I deliver over for discussion and criticism, if it be thought worthy of so much respect. It wants something of what I have in all sincerity designated as the fascinating simplicity of the original scheme out of which it has been formed. But I am not aware that it anywhere trenches materially upon sound principles of administration; and from long and attentive consideration of the working of the administrative machine in Bengal, I venture to pledge myself that it will be found, if ever it be set to work, a good working system.

(signed) *J. P. Grant.*

23 November 1854.

— No. 5. —

No. 5.
Letter from W. Grey, Esq., to C. Beadon, Esq. 26 October 1854.

LETTER from *W. Grey*, Esq., Secretary to the Government of Bengal, to *C. Beadon*, Esq., Secretary to the Government of India, Home Department.

Judicial.—No. 2382.

Sir, Dated Fort William, 26 October 1854.

I AM directed to address you with reference to the measure which was proposed by the Most Noble the Governor of Bengal on the 28th April last, for carrying on the revenue and police administration of the Lower Provinces by means of collector-magistrates, assisted by subordinate joint magistrates and deputy-collectors, instead of by separate collectors and magistrates, as at present; his Lordship's object having been to place the important duties of the magistrate in more experienced hands than is now the case, and thus to meet the common and not unfounded complaint, that the magistrates are too young and inexperienced for their duties.

2. The Lieutenant-Governor thinks it probable, that as this proposal, which is still before the Government of India, involves other considerable changes, it may yet be some time before the Government of Bengal can receive authority to carry it into effect; and he wishes, therefore, to represent that as, whenever that authority may be received, the change will have to be made gradually, as offices fell vacant, and as the present is the time of year at which vacancies mostly occur, if the present season is allowed to pass by, another year will probably elapse before the new system can even be commenced upon.

3. The proposed change, the Lieutenant-Governor thinks, will be a very great improvement, more especially in the districts most resorted to by indigo planters; and he is accordingly desirous of seeing it carried into effect in those districts as speedily as possible, and, if possible, at the present time, so as to save a whole year's further delay.

4. The districts which, in the Lieutenant-Governor's opinion, most urgently require this change are, Nuddea, Jessore, Purnea, and Tirhoot, and also the subordinate district of Pubna, all of these districts thickly inhabited by indigo planters.

5. To make the change at once in these districts would involve an increase of civil charges of only 1,000 a year in the four zillahs, viz., the raising of the salary of the collector from 23,000 to 24,000 rupees, which, in the Lieutenant-Governor's judgment, would be the proper salary to assign to the collector-magistrate. The officer now paid 10,800 per annum as magistrate in those zillahs, would continue so paid at present, as a joint magistrate and deputy-collector of the first class. Thus the additional expense for those four zillahs would amount to no more than 4,000 rupees per annum. In Pubna, which requires the change more urgently perhaps than any of the others, the expense would be greater, as the joint magistrate and deputy-collector at Pubna, who does the full and very onerous duty of magistrate and collector in that heavy indigo district, only receives 18,000 rupees per annum. It was part of the scheme now before the Government of India, that the salary of this office should be made equal to its duties; and if this is not done now, the present incumbent, who is an officer of about 16 years' standing, and of great efficiency as a magistrate, must be promoted during the cold weather, and will be replaced at Pubna by a comparatively inexperienced officer. To raise the salary at Pubna to the full amount which the Lieutenant-Governor has recommended for the collector-magistrate, would cost 6,000 rupees per annum; making the whole present additional cost of the measure 10,000 rupees per annum.

6. The Governor-General in Council is aware, however, that it is proposed in the plan already submitted, that the total present expenditure shall not be exceeded, so that the additional expense above shown would cease as soon as the change was generally adopted in all districts.

7. The Lieutenant-Governor desires to propose, therefore, that permission should be given him to make the change at once in the above-named districts, and

and in the manner specified, on the occasions which will arise out of the vacancies of the present season, in anticipation of sanction to the more general measure now under consideration.

No. 5.
Letter from W. Grey, Esq., to C. Beadon, Esq.
26 October 1854.

I have, &c.
(signed) *W. Grey,*
Secretary to the Government of Bengal.

— No. 6. —

No. 6.
Minute by the Governor-General.
3 January 1855.

MINUTE by the Most Noble the Governor-General, subscribed to by the Honourable Members of Council, Civil Service in Bengal.

Dated 3d January 1855.

1. In ordinary course I should have reserved the Minute, which our honourable colleague Mr. Grant has recorded upon the letter from the Government of Bengal, regarding the union of the offices of magistrate and collector, for consideration in Council. It seems to me, however, that it will be better to pursue a different course upon the present occasion.

2. Since the letter in question was addressed to the Government of India, the administration of Bengal has been transferred to the hands of the Lieutenant-Governor. The important question now before us, connected with the machinery of administration in that province, can hardly be satisfactorily discussed in Council, until we shall be in possession of the views of the Lieutenant-Governor on the subject.

An intermediate reference to his Honor was proposed by me on the 11th July last, in a Minute which seems to have been overlooked. The reference was proposed at that time merely to save time. It has become all the more necessary now, from the weighty objections which Mr. Grant feels to several of the main portions of the proposal as originally framed. Accordingly, I propose that the whole of these papers should be referred to the Lieutenant-Governor, with a request that he will favour the Governor-General in Council with his opinion upon the important subject of which they treat.

3. It will be necessary also to reply to the letter from the Lieutenant-Governor, dated 26th October, in which he requests sanction to the union of the offices of collector and magistrate in several districts which he names, as vacancies may occur.

As the principle of the union of those offices in Bengal generally is still in question, I apprehend that it will be necessary to decline for the present giving the sanction which has been solicited for the partial introduction of the proposed change.

(signed) *Dalhousie,*
3d January 1855.

J. Dorin,
8th January 1855.

J. Low,
13th January 1855.

J. P. Grant,
13th January 1855.

B. Peacock,
22d January 1855.

— No. 7. —

No. 7.
Letter from C. Beadon, Esq., to the Secretary to the Government of Bengal.
26 January 1855.

LETTER from *C. Beadon*, Esq., Secretary to the Government of India, to the Secretary to the Government of Bengal.

(No. 163.) Home Department.

Sir, Dated 26th January 1855.

SINCE the Government of Bengal addressed the Government of India, under date the 28th of April 1854, proposing a reorganisation of the system of civil administration in Bengal, including the re-union of the offices of magistrate and collector, the local administration has been transferred to the hands of the Honourable the Lieutenant-Governor. The Governor-General in Council is therefore desirous of possessing the views of His Honor on the above question before coming to a decision upon it. This reference has become the more necessary now from the weighty objections which the Honourable Mr. Grant feels to several of the main features of the proposal as originally framed by the Government of Bengal; and I am therefore directed to request that you will lay before the Honourable the Lieutenant-Governor the papers noted in the margin* (which to save time, are sent in original), with a request that he will favour the Government of India with his opinion upon the important subject of which they treat.

2. I am directed at the same time, with reference to your communication, No. 2382, dated the 26th October last, to state that as the principle of the union of the offices of collector and magistrate in Bengal, generally, is still in question, the Governor-General in Council is not prepared at present to accord his sanction to the proposal therein submitted for the partial introduction of the proposed change.

3. The return of the accompanying papers is requested with your reply.

I have, &c.
(signed) *C. Beadon*,
Secretary to the Government of India.

— No. 8. —

No. 8.
Letter from W. Grey, Esq., to C. Beadon, Esq.
13 March 1855.

LETTER from *W. Grey*, Esq., Secretary to the Government of Bengal, to *C. Beadon*, Esq., Secretary to the Government of India.

Home Department.

Judicial.—No. 366.

Sir, Dated Fort William, 13th March 1855.

WITH reference to your letter, No. 163, of the 26th January last, with enclosures, I am directed to forward, for the information of the Government of India, the accompanying copy of a minute recorded by the Lieutenant-Governor.

2. The enclosures of your letter are returned.

I have, &c.
(signed) *W. Grey*,
Secretary to the Government of Bengal.

* Letter from the Secretary to the Government of Bengal, No. 924, dated 28th April 1854, and enclosures; Minute by the Honourable J. P. Grant, dated 23d November 1854.

— No. 9. —

No. 9.
Minute by Lieutenant-Governor.
1 March 1855.

MINUTE by Lieutenant-Governor.

Union of Collectorship and Magistracy in the Lower Provinces. Objections to the measure stated in a Minute in Council by the Honourable *J. P. Grant.*

I DO not feel the weight of the objections made in this minute to the adoption of the measures proposed by Lord Dalhousie as Governor of Bengal in his Lordship's communication to the Government of India, No. 924, of 28th April 1854.

2. In the papers then submitted to the Government of India, it was shown how the plan of *separate* magistrates, which was introduced subsequent to 1838, was thought to have failed of effect. Before that time the system in Bengal had been the same as it now is and long has been in the North-western Provinces, in Bombay, in Madras, in the Punjaub, in Burmah, in all the Non-regulation Provinces—in short, all over British India; viz. the collectorship and magistracy were united in the hands of one officer. And it was proposed by Lord Dalhousie to return to this system in Bengal, and at the same time to take from the collector-magistrate some of his heavier judicial powers and duties.

3. In the minute of the Honourable Member of Council this proposition is described as "one step of a series of functional changes to be afterwards introduced." I do not find this to be the case. It was proposed as one of several changes. But it was not necessary as a step to any of them. It had no necessary connexion with them. It might have begun and ended with itself, and any of the others might have been proposed even if this had never been thought of. The other measures were:—

1st. To prevent frequent changes by equalising the salaries of collector and judge.

2nd. To place all mofussil functionaries, judicial and executive, in subordination to the commissioner.

3rd. To extend the experience and official education of assistants by making them do duty under the judge, as well as the magistrate and the collector.

4th. To keep the judicial and executive line separate, after a certain rank attained.

5th. To appoint a class of superior mofussil judges with higher pay and powers than the zillah judge.

4. Whether or not these measures be all expedient is, of course, matter for question. But I think there can be no question that not one of them depends necessarily on the union of the office of magistrate and collector, and that the union in question, though proposed at the same time, was not proposed as a step to the other changes.

5. The union of the two offices seems, however, to have been viewed in the minute before me as if Lord Dalhousie had proposed it as a cure for all existing evils in the police. And this being assumed, it is shown with great success that it can have no such universal effect. It is stated with perfect justice, that one great cause, perhaps the greatest, of the present inefficiency of the police, is the want of adequate constabulary force; and it is urged undeniably that to make the magistrate and collector one officer will not add to the pay or number of the constables. It is also represented that this union was strongly relied on by the Lieutenant-Governor of Bengal, in a recent conference with a deputation of indigo planters, as a measure of great practical reform, so as to lay that functionary open to the imputation of raising hopes which must certainly be disappointed; an imprudent act, to which the Honourable Member of Council is anxious on no account to be considered a party.

6. But I can find nothing in the papers submitted by Lord Dalhousie to the Supreme Government, which leads me to suppose that his Lordship expected the proposed change to cure all existing evils in the police, or indeed any evils, but those on account of which it was expressly recommended. And as for the Lieu-

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tenant-Governor, I have been at the trouble to refer to the newspaper report, a very accurate one, of what took place on the occasion alluded to, and I find, as I expected, that he never relied upon the change as "a great measure of practical reform," but simply stated, that a return to the system of collector-magistrates would remove the objections made to the youth and inexperience of the present magistrates. And really if the appointment of older men as magistrates, which must unquestionably be the general effect of the proposed change, would not, *pro tanto*, be a cure for the youth of magistrates, I humbly submit that I know not what else will cure it.*

7. I suppose that everybody will agree with the Honourable Member of Council in desiring that the constabulary force should be as large, and the pay of the police as high as the nature of the service requires, and the Government finances can afford. But I do not see why this expensive improvement, whenever the Government may be in a condition to make it, should not be made just as easily under collector-magistrates as under separate magistrates; or what the change in the superior functionary has to do with the pay and numbers of the subordinates.

8. It is objected also to the measure proposed by Lord Dalhousie, that it is contrary to sound principle. Even if this were satisfactorily made out, which I do not think it is, I should be content to oppose to the objection founded on theory the unqualified success of the measure in practice. All over India the measure succeeds. In no province in which it is in use would they hear of its being altered. We find it in the highest favour in Bombay and Madras, and in the North-western Provinces of Bengal. We have unhesitatingly introduced it into recently acquired territory at both extremities of our empire. We find it suitable to the Punjaub, and we find it suitable to Burmah. No doubt it will immediately be made the rule in Nagpore. It is even in force over a large part of the provinces subject to the Government of Bengal. It prevails in all Assam, Arracan, and the districts of the South-western Frontier; in all Cuttack, and in eight other districts of the Regulation Provinces. It seems to me unnecessary, in the face of such facts as these, to argue on the theory.

9. But surely if there be any part of India to which theoretical objections to this measure have absolutely no application, it is Bengal. I do not by any means agree with the Honourable Member of Council in what I consider his under-estimate of the importance of a collector's duties in the Lower Provinces. It can hardly, however, be disputed that in proportion as they are unimportant there must be less room for abuse in the proposed union of duties. In the North-western Provinces, where the collector's duties are onerous, engrossing, all-pervading, and where the amount, as well as the method, of collection is liable to variation, abuse might well take place, though we are assured on the weighty authority of Mr. Thomason, that, so far from abuse, the system produces nothing but good. But in Bengal, where the amount to be collected is fixed, and the manner of collection one unvarying and almost mechanical routine, abuse is simply impossible.

10. The question of the introduction or non-introduction of the proposed measure seems to me mainly one of economy of power. We have collectors whose duties are of a nature involving heavy responsibility, and requiring a certain maturity of discretion. They must, therefore, be persons of sufficient experience, and must be paid in proportion. Yet it is certain that their time is only partially occupied by the duties of their offices, and there is nothing in the nature of their duties which forms a reasonable objection to their employment as magistrates. On the other hand, we have magistrates overworked, and of immature experience, who, though they require naturally the immediate control of more experienced seniors, are practically very much left to themselves; and who nevertheless exercise functions upon the punctual and discreet discharge of which more of the happiness of the people depends than upon the conduct of any other civil officers of the Government. To give these duties, or (as is proposed) a large portion of them, to the older and more experienced functionary, for whom occupation is declaredly wanting, and to place the junior in immediate subordination to

* I append to this Paper an extract from the Report in question.

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to the senior, seems to me a proposition most obviously and necessarily arising ou of the circumstances—most sound, expedient, and right.

11. The argument against this measure, upon which, in the minute before me, most stress appears to be laid, is that which is founded on the alleged incompetency to perform a magistrate's duties of a proportion of the officers usually to be found in the rank of collectors. Fully one-fourth, it is estimated by the Honourable Member, will always be unfit to have the double charge of magistracy and collectorship, and even of the rest, it is computed that several must be expected to make bad magistrates. "Here is another difficulty," it is stated, "that cannot be shirked; it must be met on the face; and how?" But I do not see that there is anything insuperable in this difficulty. Indeed, I doubt whether, as a reason for preferring the present system to the system proposed by Lord Dalhousie, it be any difficulty at all. For even taking the case as supposed, though I cannot but look upon it as an extreme supposition, that one-fourth of the existing collectors are men to whom the Government would not willingly confide the duties of magistrate, it is to be remembered that they all have been *magistrates*. *If after considerable* experience, and after having risen to the rank of collector, they are now inefficient and incompetent, how much more incompetent must they have been when young in years and deficient in experience? To the present system, under which, as it has hitherto been worked, a proportion of such men have been, and if the system be continued, will be magistrates without experience, the Honourable Member sees no objection. But to the proposed system, under which a like proportion will be magistrates, after having had experience, he has insuperable objections. Yet it is clear that there would be, at all events, the advantage of experience in favour of the magistrates under the proposed system, as compared with the magistrates under the system now in use.

12. The fact is, that this objection, so far as it is of force, is an objection to one system, just as much as to the other; and, under the present constitution of the service, to any system that could be devised. There will always be a certain proportion of the members of the service (even under the coming reign of pure intellect), who, on trial, will be found more or less unfit; and it is much more likely, as was long ago urged by Lord Auckland, as an argument in favour of the union of the magistracy and collectorship, that two good officers will be forthcoming in each district than three.

13. For my part, I am prepared under either system to deal with incompetency as it deserves, whether it be found among juniors or seniors. In this I have only to follow the example set me by the Most Noble the late Governor of Bengal, and I should not be startled by the result, even though it should in some instances, and I believe they would not be frequent, place "the young man at the top and the old man at the bottom." In such cases we might miss something of the weight of experience, but we should gain that which would be accepted as a reasonable compensation. And in any event such instances would assuredly be exceptional.

14. Adopting, therefore, the reasons for the measure assigned in the papers submitted to the Supreme Government by Lord Dalhousie, in April last, I am strongly in favour of uniting in the whole of the Lower Provinces of Bengal, as they are united already in many parts of those provinces, and everywhere else in British India, the offices of magistrate and collector. If it be still objected that the union will not cure every evil now attributed to our police system, I must answer—certainly it will not. Nor is it intended to cure them. But it will assuredly do what it was expected to do by Lord Dalhousie when he proposed it; and it is no sound objection that it will not do that for which it was never meant.

15. Regarding the other changes proposed, I shall state my opinion very briefly. I very warmly assent to the proposition for a grade of chief provincial judges, and I earnestly hope this may speedily be adopted. I agree entirely with the Honourable Member of Council, whose minute I have been considering, in objecting to that part of the proposed changes which would place the judge on an equality with the collector-magistrate. I cannot add to, and I would not diminish aught of the force with which the objections to this plan are stated by the Honourable Member. The zillah judges may well be left on their present

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footing as to salary. To the collector-magistrate it will be sufficient to assign 2,000 a month.

16. I go entirely with the Honourable Member in his objections to the proposal for placing the judge under the commissioner of revenue and police.

17. I think it will be very expedient to extend the field of education of assistants, by making them do duty under the judge as well as under the magistrate and collector. But without a considerable increase to the number of the assistants, I doubt if this plan would in practice come to much effect.

18. The proposition to keep the judicial and executive line separate, after a certain rank attained, sounds very wholesome. I doubt, however, if there be as much in it as there seems to be. Looking back to the Sudder bench for some years, no one will say that the worst judges have been those taken immediately from the executive branch of the service. The plan is proposed by the Most Noble the Governor of Bengal, with a large margin for exceptions (see paragraph 14 of the letter to the Government of India of the 28th April last), and with that ample margin, I am very willing to adopt it. But I should be prepared to see the exceptions sometimes swallow up the rule.

19. It may be expected that I should submit my opinion on the comprehensive plan proposed in the latter part of the Minute of the Honourable Member of Council in substitution of that of Lord Dalhousie.

20. With regard, then, to the arrangement and employment of the covenanted officers under the plan in question, I have to remark, that it is too expensive to be worked at present.

21. The plan which at present exists employs 98 officers, at an expense of 19,23,600 rupees per annum.

22. The plan proposed by Lord Dalhousie would employ 97 officers, at an expense of 19,34,400 rupees.

23. The plan proposed by the Honourable Member, assuming that he would maintain the number of judges* as now, on the same salary; and assuming also, that the intention of his plan is to put a magistrate and a collector, and a junior officer, on 700 per mensem, as their lieutenant, at every† one of the 36 stations, would employ 134 officers, at a cost of 23,78,400 rupees.

24. My plan would involve scarce any change in the number of officers now employed, or in the amount expended, but would slightly reduce both. I would make all the present larger collectorships, 22 in number, collector-magistracies on 24,000 per annum. I would make all the smaller collectorships, such as Monghyr or Beerbhoom, and all the independent joint-magistracies and deputy-collectorships, such as Pubna or Malda, collector-magistracies on 18,000. The total number of these would be eleven. (This would accord with the principle of the Honourable Member's plan of gradations of magistrates and collectors). The Cuttack collector-magistracies, which are also salt agencies, I would leave as at present, viz., 3 on 28,000. I would have 22 joint-magistrates and deputy-collectors on the present salaries of magistrates, viz., 10,800, and, as at present, 11 such officers on the lower salary of 8,400. My total of officers employed would be 96, and the expense 19,20,000.‡

25. I highly applaud and assent to all that part of the Honourable Member's scheme which relates to the location in the Mofussil of judicial and executive officers, instead of crowding them in zillah stations. This system has already been commenced, and it is most desirable that it should be extended. I have lately conferred on this subject with the very intelligent Commissioner of the Benares Division (under the North-western Provinces), and I am satisfied that the better mofussil administration which undoubtedly prevails in those Provinces, as compared with the Lower Provinces, is mainly owing to the general location of trustworthy

* On this point, see close of para. 33.

† See also close of para. 33, but compare para. 36.

‡ Throughout these comparisons, the collectorate of Calcutta and the magistracy of Howrah are omitted on all sides. The former is no more to be included than the chief magistracy of Calcutta, and the latter is a specialty, being a district without any revenue duties annexed.

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trustworthy agents in the interior of districts there—an advantage which is very much to be desired in Bengal. Mr. Tucker is of opinion, and I entirely agree with him, that it would be a great improvement if the subordinate mofussil officers were in all things subject to the collector-magistrate at the zillah station. At present the chain of subordination is broken in the criminal or magisterial line by directing the appeal from deputy or assistant magistrates in the interior, not to the zillah magistrate, but to the sessions judge.

26. I should gladly see our zillahs divided into convenient subdivisions, each under a deputy or assistant, covenanted or uncovenanted, authorised to act both as a revenue and magisterial functionary, and subject in both branches to the control of the collector-magistrate at the zillah station. Under these subdivisional functionaries, would be the darogahs of police. Such an organisation would, I am well assured, go near to prevent such hideous oppression as I lately found grinding down a large territory and driving the Ryots into Nepaul from the Zemindarree of the Rajah of Bettia; and it would do in the Lower Provinces what we are assured it has done or is doing in the Upper.

27. That it is necessary, abundantly necessary, to strengthen our subordinate police, is a fact on which the Honourable Member of Council has dwelt with a force of statement and argument to which all who know the country will give their ready assent. Not only are our thannah establishments too few for the absolute wants of the country, but, excepting the darogahs, they are paid so as almost to justify corruption. When a mohurir of a thannah is paid seven rupees a month, a jemadar eight, and burkundauzes 3-8 and 4, we may write and talk as we will, but no native can believe that we really set our faces against abuse. It is an especial disadvantage of this scale of payment that it forbids the introduction of a better class of men into the police. Our darogahs are now well paid, and their office may now lead to distinction and honour. But an inexperienced man however well educated, cannotbe employed as a darogah. To become a good darogah, a man should first serve as a good darogah's deputy. This can only be by entering the service as a mohurir on seven rupees a month; and how is it possible that a man of good education and honest intentions can take such an office, or taking it, fail to make shipwreck of his honesty?

28. The sooner this system of payment is changed the better; and I quite agree with the Honourable Member that, until this change is made, no striking improvement can be expected in the police. But I know not how long it may be before the Government is able to carry an improvement into effect which will involve so large an expensé. Meanwhile, I see no reason for delaying minor improvements, which will cost little or nothing. To concentrate the executive power of a district in the hand of one collector-magistrate, will cost nothing, and might be done, if the Supreme Government would permit it, directly. To organise the subordinate establishments, covenanted and uncovenanted, and locate them in fit places in the interior, would cost what, in comparison with other proposals, might be called next to nothing, and might be done in the course of this year. And it would be a task on which, had I but the instructions of the Supreme Government, I should enter with the utmost confidence and alacrity.

(signed) *F. J. Halliday.*

Neamutpore, G. T. Road,
1 March 1855.

Extract from a Report in the Hurkaru Newspaper of the Remarks made by the Lieutenant-Governor of Bengal on the occasion of receiving a deputation of Indigo Planters, 10 November 1854.

"The great desire for appeal in these cases arises, no doubt, from the general feeling of the youth and comparative inexperience of the magistrates; and this, I admit, is a legitimate cause of doubt, and sometimes of dissatisfaction. But I can inform you that the Government have under consideration a plan for remedying this, by a return to the system of collector-magistrates. This, it is probable, will in time be generally carried into effect. But I have reason to hope that it will very speedily be effected in the chief indigo districts; and I have

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with me the Jessore committee, and even, I think, most of the gentlemen present, when I state my opinion, that this measure, by assigning the powers of the proposed Act to officers of greater experience, will render the appeal unnecessary, and will remove much of the objection now taken to the Bill."

(A true copy.)

(signed) *A. W. Russell,*
Under-Secretary to the Government of Bengal.

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No. 10. Minute by the Hon. Mr. Grant, 8 May 1855.

MINUTE by the Honourable Mr. *Grant*.

Proposed Reorganisation of the System of Civil Administration in Bengal; including the Reunion of the Offices of Collector and Magistrate.

Dated the 8th May 1855.

1. The Honourable the Lieutenant-Governor of Bengal has sent up his views upon this question, which was raised before His Honor's Government was formed.

Having very fully explained my opinions upon the original project, in a Minute recorded under date the 23d of November 1854, and having therein set forth generally, but at some length, a project of my own, in my preference to which I am constant, by way of modification of the original proposal, I have not much new matter to place upon record on this occasion. I must, however, make some remarks upon the Honourable Lieutenant-Governor's Minute, chiefly in order to correct some mistakes into which his Honor has fallen in regard to positions taken up and arguments used by me. For, otherwise, I fear that those who have read my minute some time ago, and who might not be inclined to refer to it again in order to check in every point, by comparison with the record itself, the representation of its opinions and arguments contained in his Honor's criticism, might be misled in some points, much to the disadvantage of my side of this important question.

2. In the 2d paragraph of the Lieutenant-Governor's Minute these words occur:—"Before that time (1838 or 1839, when magistracies and collectorships began to be divided) the system in Bengal had been the same as it now is, and long has been, in the North-western Provinces, in Bombay, in Madras, in the Punjaub, in Burmah, in all the Non-regulation Provinces,—in short, all over British India; viz., the collectorship and magistracy were united in the hands of one officer." To any one not personally acquainted with the minute history of our changes of system in Bengal, the inference from reading this passage would naturally be that the system by which these two offices are united, not only was the system in force at the moment when the change of 1838 or 1839 was commenced, but long had been the system in force in Bengal (and in the North-western Provinces), in the same manner as it then "long had been" the system in force in Bombay, Madras, &c. To prevent any such mistaken inference, I must beg that a reference may be made to paragraph 4 of my Minute, where the history of the change is given. The union system in Bengal has no claim ever to have been a time-honoured institution, swept away by unpractised theorists and rash innovators in 1838. It was first introduced in Bengal about 1830 or 1831; and after a trial of seven years, it was weighed in the balance and found wanting by a police committee, which, after careful inquiry, reported against it in 1838, as being an experiment which had failed. That police committee comprised many able men, and amongst them none abler than Mr. Halliday, the present Lieutenant-Governor of Bengal.

3. In paragraph 5 of his Minute the Lieutenant-Governor writes thus:—"The union of the two offices seems, however, to have been viewed in the Minute before me as if Lord Dalhousie had proposed it as a cure for all existing evils in the police. And this being assumed, it is shown with great success that it can have no such universal effect:" and then his Honor proceeds to say that this view of Lord Dalhousie's proposal was unwarranted. Certainly, if any such view of Lord Dalhousie's proposal had been taken by me, it would have been unwarranted,

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unwarranted, and, being unwarranted, it would have been culpable. But I never took any such view. I never imputed absurdity to the reasoning by which the proposal was supported; and on a careful reperusal of what I wrote, I am sure that, but for a thorough misapprehension of my whole argument, no such view would have been attributed to me. Substantially my argument was this. I laid down the position that a change of system, even though the new one may be better in itself than the old one, is an evil, inasmuch as it is a change, and that this evil should not be incurred for any other than a material advantage. I said "In my opinion it is generally worth while to make a change of system when that change removes material faults of principle, in what affects the foundations of a good administration. But I must confess myself to be slow to be convinced of the expediency of changes of system, which affect the outside and the form of things, but leave essential errors exactly where they were." In this position I fortified myself by authority. I proceeded by endeavouring to show that the proposed union of offices was at best a change of system affecting "the outside and the form of things," which could not, therefore, involve a material advantage. I went on to argue that, system for system, the proposed system was in itself open to grave objection. Now, this view may be right or wrong, but it has nothing either of the disrespectful or of the absurd character of the view imputed to me.

4. The Lieutenant-Governor has corrected a mistake into which I (and not I alone) have fallen in attributing to him the expression, before an assembly of indigo planters, of an opinion that the union of the offices of magistrate and collector would be "a great measure of practical reform": and he has shown that he said no more upon that occasion than that this union would remove the objection often taken to the youth of magistrates. I regret very much having fallen into this error, which was caused by my omitting to refer to the printed report of the Conference. I hope, when a reply is made to the Bengal Government, that there will be no objection to its conveying an expression of this regret to his Honor.

5. I must be allowed, however, in justice to my cause, to claim for my side of the question the support which the correction of my mistake has given to it. If the Lieutenant-Governor, who is in favour of the union, is careful to correct an erroneous belief of his having expressed an opinion that it would be a measure of great practical reform, those who, like the authorities I have quoted, object to changes of system except for objects of great practical reform, should be strengthened by the Lieutenant-Governor's opinion in their opposition to the measure.

6. In paragraph 11 of the Lieutenant-Governor's Minute, the following argument is used:—"To the present system, under which, as it has hitherto been worked, a proportion of such men have been, and, if the system be continued, will be magistrates without experience, the Honourable Member sees no objection." "But to the proposed system under which a like proportion will be magistrates, after having had experience, he has insuperable objections." Upon this I have to remark that I did see, and I do see, objection, and material objection, to the present system; and I beg to refer to paragraphs 8 to 11 of my Minute, where I have stated my objection in language which I should have thought strong and explicit enough. I admitted the justice of the objection of inexperience; I designated the system in its present shape as "strange and indefensible;" and I said there was a "glaring error" in the manner in which the system had been established. Because, nevertheless, I thought the mere reunion of the offices would make matters worse, I ought not to have been treated as seeing "no objection" to a system, the errors of which I had been at so much pains to bring into broad daylight.

7. Having been obliged, in order to set my argument once more upon its own legs, to take up so much space, I will endeavour to compress as much as possible what I have to say, by way of rejoinder, in support of the view I take of the question of the reunion of these offices.

8. I find only one argument to answer. It is maintained (see paragraphs 8 and 9 of the Lieutenant-Governor's Minute), that though it were successfully made out, which is not admitted, that the union of fiscal and criminal powers in

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one man is unsound in theory, it is successful in practice all over India, except in Bengal, and ought, therefore, to be at least as successful in practice in Bengal, where the collectors have less to do than elsewhere.

9. In paragraph 10 of my Minute I anticipated this argument, and, as the remarks there made remain unanswered, I need not recur to them. The examples of new provinces, such as the Punjaub, Pegu, and Nagpore, are now pressed into the service, and not only these provinces, but such wilds as Assam and the S.W. Frontier agency are treated as fit to become examples for the administration of the richest parts of Bengal. This is as though the civil administration of Middlesex should be modelled after that of the Isle of Skye. Surely no one doubts that poor countries and scanty populations must be governed in a manner conformable to their requirements, and to their means of paying for government; and that semi-barbarous people do not require the same expensive and refined system of administration as highly civilised people. And surely there is one method for people beginning to be broken into civilised government, and another method for people who have been under our laws for several generations. Besides it is inconsistent to stop here in this argument. Why does not the Lieutenant-Governor carry out his theory, and recommend the Calcutta police magistrates all to be appointed also collectors of abkaree and house-tax? If we are to remodel the administrative system of a Bengal zillah, with its immense real and personal wealth, its rich talookdars, its zemindars, and its English planters, after the system appropriate for our latest acquisitions, we should unite the offices not only of the collector and the magistrate, but also always that of the judge, and often that of the military commandant, in the same person.

10. But if we are to make this appeal from theory to practice, as our present business is only with Bengal, why is the appeal so carefully confined to all other parts of India, except Bengal, when we have actual experience in Bengal itself to appeal to? Why is the fact that we have such experience in Bengal itself so carefully kept out of sight? In a despatch from Bengal, I do not think this fact should have been ignored.

11. The Police Committee of 1838, though I was not a member of it, was too noted a subject in the history of the Bengal police to have been forgotten by me; I have, therefore, sent for the printed report of that Committee, which I circulate with this Minute. I request particular attention to paras. 8 to 12 of that Report, which are devoted to this particular subject.

12. That Committee not only took into its consideration a mass of official returns, which had been called for by Government, it sought "for information on a more enlarged scale, especially from private individuals, native as well as European, who had resided or were still residing in the interior, and whose local knowledge and experience in different parts of the country qualified them for giving the most valuable information."* The effect of the union of the offices of magistrate and collector was the first point to which the Committee in their Report adverted. They commence their remarks on this point with these words: "To the union of the office of magistrate and collector, injurious effects are generally attributed."† They quote, with approval, the opinion of an officer who writes: "In some districts, it (the police) is made over entirely to the deputy and joint magistrate; and where this is the case, I have generally observed that the duty is much better done."‡ The Committee themselves say: "We doubt much if, in the settled provinces, where the revenue is realised by the process of sale, and the collectors have little communication with the agricultural community but such as must unavoidably render them unpopular, any advantage is derived by the police from the conjoined influence of the collector, or if the greater experience available for the magistracy by means of that conjunction is not more than counterbalanced by the inconveniences resulting from it."§ So far the Committee report unanimously. They proceed to say: "The majority of the Committee, in concurrence with almost the whole of the gentlemen, both in and out of the service, who have been asked their opinions on the subject, think decidedly, that the efficiency of both departments would

* Report, para. 2, p. 1. † Para. 8, p. 3. ‡ Para. 9, p. 3. § Para. 10, p. 4.

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would be much better secured, generally speaking, by entrusting the superintendence of each to a distinct functionary. We are of opinion that their attention would be less distracted by conflicting duties; that each would then be individually responsible for his own department, and enjoy the whole credit of his own exertions. And it will not be the least of the advantages resulting from such an arrangement, that no idle or incompetent person could then be long tolerated in either situation."*

13. To show the nature of the utmost possible difference of opinion there can have been between the majority and minority of the Committee upon this point, I will here cite the explanatory note with which the only two members who signed the Report in a qualified manner, namely, Mr. Lowis and Mr. Halliday, accompanied their signatures: "We have signed this Report, not because we agree in its contents, for we have made other propositions in a Minute rendered in the Appendix, but because, being overruled by the majority in respect to our own suggestions, we think those contained in this Report the next best."†

14. The only gentleman who at any time took a part in the labour of the Committee, and who in any degree supported the union of the offices, was Mr. T. C. Scott. Another member, who left the country before the Report was signed, was Mr. D. C. Smyth, who had the reputation of being quite the best, as he was one of the most experienced magistrates in Bengal. He recorded his opinion of the disjunction of the offices in these words: "I consider this division of labour to be indispensably necessary as a preliminary arrangement, and until this suggestion (the recommendation of the Committee to disjoin the offices) is carried into effect, I do not anticipate any improvement in the state of the police."‡

15. Mr. F. C. Smyth, at that time superintendent of police, thus records the result of his experience: "Nothing can be worse than the union. It is wrong in theory and evil in practice. I need not say anything more on this subject, as I believe out of Calcutta the opinions of the service are unanimous."§

16. Mr. Halliday, with whom is Mr. Lowis (and in whose opinion upon this point, as he then thought, I entirely agree), went further. He would not only have taken away from magistrates their fiscal functions, he would have taken from them also their criminal judicial functions, leaving them simply heads of police. He wrote: "The union of magistrate and collector has been stigmatised as incompatible, but the junction of thief-catcher with judge is surely more anomalous in theory, and more mischievous in practice."‖

17. In accordance with the recommendation of the Committee, the Bengal Government commenced upon the disjunction of the offices, which measure was completed in a short time. Such was the judgment pronounced upon the union, after an experience of its effects for seven or eight years. Such is the result of that appeal from theory to practice, which has been insisted upon.

18. I beg it to be understood, that although the result of the mature consideration which I was obliged to give to this question of system, when I came to write a formal minute upon it, and of the perusal of the judgment passed upon one of the rival systems, after adequate trial, in 1838, has been to convince me that the system of the union of the offices is, in Bengal, the worse of the two, I do not rest my main objection to the proposed change of system upon that conviction. Many, who I know may be in the right, differ from me in this view; and upon this point my own mind was almost in a state of indifference when I began to examine the question. We are all apt to magnify the evils before us at the moment, and to connect them more than the facts warrant with the present system, whatever it is. Perhaps the Committee of 1838 magnified the evils then before their eyes; attributed them more to the system than could fairly have been attributable to any mere system; and were too ready to flee from evils that they knew, to evils that they knew not of: as I believe many of us now

* Para. 12, p. 4. † Report, para. 30. ‡ Appendix, p. v.
§ Appendix, p. xi. ‖ Appendix, p. xx.

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now magnify the evils before our eyes, and attribute them, more or less unfairly, to mere system; and are too ready to flee to evils which, if it cannot be said that we knew not of them, it must be said (of some of us at least) that we have forgotten them. Let it be taken, that without other fundamental reforms, either system better administered would be better than the other, administered as either has yet been: that merely as systems, it is, as the saying is, six of one and half a dozen of the other. I wish to give the Lieutenant-Governor's recommendation every advantage. I will therefore grant him that he and his colleagues, and his Government had no solid ground for what they recommended, and what they did, in 1838 and 1839. As that recommendation was the result of extensive and special inquiry made, and of much evidence taken, and as it was the result of the joint deliberation of many experienced officers, I think I do not claim more, in return, than unprejudiced people will generally grant me, when I say that the present recommendation, not being the result of any such special measures, cannot at present claim any more solid ground. There was a stir about the badness of the police in 1838. Mr. Halliday then recommended the disunion of the offices of magistrate and collector, which was effected. There is a cry about the badness of the police now. Mr. Halliday now "strongly recommends" the union of the offices of magistrate and collector. Are we never to get out of this round? Can it be right in the Government of this great country to spend its time and its energy, and the time and energy of its officers, always in turning half a dozen into six, and then in turning six back again into half a dozen?

19. I am sure that in the high quarter in which this proposal was first approved, if I have succeeded in showing that the change is not materially for the better, I shall have done all that is necessary for my case there.

20. As to my general objections to change for the sake of change, I have written at greater length, and more earnestly, than many will think appropriate to the occasion. But I have here desired to record once for all my protest against a method of administration which has been, in my opinion, too rife in this country, for the last quarter of a century.

21. Every one who takes this line must make up his mind to be charged as an obstructor of measures of improvement. But I have given earnest of my not being bigoted to the existing state of things, which in the matter of police and criminal justice I have disapproved of in strong language, for reasons assigned. I ask for the consideration of those reasons; and if they are admitted to be valid, I ask for such a reform as will really meet the evil. I have objected, for reasons assigned, to many parts of the scheme of reform submitted from Bengal. If these reasons are invalid, the sooner my objection is overruled the better. If they are not invalid, something more must be done. I have shown that I am no mere objector, by proposing a scheme, which professes to be complete in itself, for the reform of the Bengal Administration, in respect both to police and criminal justice. I pledge myself to the practicability of this scheme, and to its facility of introduction; and I affirm, that every one who will thoroughly acquaint himself with what the true evils of the present state of things are, will admit that my scheme of reform goes to the root of them all, and that nothing short of it will do so. If so much is admitted, I maintain either that this whole scheme should be immediately introduced, or that some other more efficient, and of course more costly, scheme should be immediately introduced. I maintain that so great is the evil, that no scheme that does not go to the root of it should be looked at; for as a question of national economy, it is not possible that the continuance of such a state of things as exists in such a populous and wealthy country as Bengal, can be otherwise, in reality, than extravagant and wasteful in the highest degree.

22. The Lieutenant-Governor mistakes the character of my plan, when he observes, that in the salaries of covenanted officers it will be more expensive than the present plan. There are now 37 officers, who are, in fact, district magistrates.* There are now only 26 zillah judges. My scheme, generally speaking, will

* Magistrates - - - - - - - - - - - - 26
Magistrates and Collectors - - - - - - - - 3
Joint Magistrates and Deputy Collectors - - - - - - - 8
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will not require more magistrates than there are judges; because the magistrates will be merely superintendents of district police. It does not affect collectors at all, but will certainly make it easy to reduce either the numbers or the salaries, or both, of the collectors and magistrates, and of the joint magistrates and deputy collectors. Besides, it is only necessary to alter the proportions of the several grades, to make the expense of the plan as much or as little as is desired.

23. The reduction of the number of magistrates by 10 or 11 will have the real effect of throwing back promotion to the office, and so of increasing the experience of the youngest magistrate by nearly two years. The equalisation of the salaries of magistrates and collectors will have the real effect of doubling the experience of the oldest magistrate. Here, then, the objection to the general inexperience of the magistrates is met by more than doubling their present experience, without making any union of incongruous duties for that purpose.

24. I disagree with the Lieutenant-Governor in thinking that the union of offices is not inconsistent with the further reforms I propose, or any of them. Under my system, the zillah magistrate will be over his whole zillah what the chief magistrate of Calcutta, who tries very few cases, would be in Calcutta if he tried no cases at all. Nobody, in that event, would think of doubling the chief magistrate's work, by giving him fiscal duties. With fiscal duties to occupy half his time, and to call him from his police work, perhaps at the very moment when it is most essential to that work that he should be attending to it only, it would be absolutely impossible for any one man himself so to control all the police darogahs and deputy magistrates of a zillah, and himself so to manage the great business of keeping the peace, and bringing criminals to justice, in a Bengal district, as the plan essentially requires.

25. I disagree fundamentally with the Lieutenant-Governor on the question of the sufficiency or insufficiency of the pay of the police darogahs. His Honor thinks the police darogahs in Bengal are now sufficiently paid. I think they are most insufficiently paid. There are now 527 darogahs on the average pay of less than 60 rupees a month.* A darogah cannot do his work without a horse, a palankeen, or some conveyance. He can hardly keep a conveyance for less than 20 rupees a month. His constant locomotion must entail other constant expenses upon him. He is in a position which makes him more likely to be tempted, and less likely, if corrupt, to be detected than any other native officer. Upon his conduct, the happiness of the people, and the security of their property, real and personal, in effect more greatly depends than upon that of any other native officer. How, even if we had no experience to guide us, any one could maintain that 50 rupees a month, with prospects worth something less than 10 rupees a month more, is sufficient pay for this class, I do not understand.

26. But what does experience teach us? Before the Police Committee's Report of 1838 the police darogahs received 25 rupees a month. Perhaps some people thought them then sufficiently paid. Whatever may have been thought of their pay, their character then was so bad, that it is hardly describable in words. No one seriously denies that it has been generally improved by the increase of pay granted in 1839. It is even asserted by some, that a few somewhat respectable darogahs actually exist. But no person, European or native, capable by personal experience of being a witness on such a question, is to be found, who will say that the general character of this class of officers is not very bad now. This fact is certain.

27. The Lieutenant-Governor, therefore, unless he is prepared to maintain the general excellence of the darogahs, as a class, which I treat as impossible, must maintain

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				Total Salary per Mensem.
* 50	First Grade Darogahs at	100	- - - - -	5,000
100	Second ,, ,,	75	- - - - -	7,500
377	Third ,, ,,	50	- - - - -	18,850
527				31,350
				Rs. a. p.
	Average per Darogah		- - - -	59 7 9

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maintain that competency, and fair prospects of rising by merit to high rank and emoluments, will not have the same good effect upon this class, which it has had on native judges, deputy collectors, deputy magistrates, and sub-assistants. Why it should be imagined that this should be so, I am at a loss to conceive. I am myself quite sure that it will not be so.

28. I have advised a reduction in the very large increase of pay proposed by the Bengal Government for native judges; which, if agreed to, will afford material assistance in raising the pay of police darogahs. By adopting a system of head darogahs, each with, say three deputy darogahs subordinate to him, I believe the great object of having all the thannah police under an officer of real respectability, not too far off to be useless, will most chiefly be attained. But a new class of officers, as assistant darogahs, must be provided; and upon the whole, if we really intend to do any good, we must make up our minds to a large increase of outlay upon this important class of officers.

29. Making the head darogahs a body of men equal in general respectability to the class of moonsiffs, will be an immense step in itself. But as far as dacoities, affrays, and forcible entries are concerned, nothing can be done without an effective body of police peons. The main expense of any rational reform of the police will be in this particular.

30. The subdivision of districts, and the grant of criminal judicial powers to the native judges dispersed through each subdivision, will cost little; nothing, in short, beyond any augmentation in the number of judges, which in some places may be requisite.

31. It is unnecessary to enter into more minute details till the principle of my scheme generally shall have been pronounced upon.

8 May 1855. (signed) *J. P. Grant.*

No. 11.
Minute by the Hon. Mr. Dorin.
11 May 1855.

No. 11.

MINUTE by the Honourable Mr. *Dorin.*

Improvement in the System of Civil Administration in Bengal, including the Reunion of the Offices of Collector and Magistrate, and the Augmentation of the Pay of Native Judges.

Dated 11 May 1855.

THESE subjects have been so fully discussed in the papers and minutes now circulated, that I think nothing remains but to refer them for the ultimate decision of the Most Noble the Governor-General.

I wish I could add that our financial prospects justify the expectation that we can afford to incur much present expense, either in the improvement of the police, or the augmentation of the pay of our native judges; but unfortunately this is not the case.

With projects for fresh outlay constantly before us, and these appeals for the correction of the general administration of the country that can hardly be resisted, we find ourselves with an excess of expenditure over income largely increasing, and which in the present year, or rather I should say the year just past, is estimated to amount to no less a sum than two millions and three quarters sterling.

This fact has recently been so palpably before us, and the probability of relief is so uncertain, that it is impossible to overlook it in considering the important questions now under discussion.

Dated 11 May 1855. (signed) *J. Dorin.*

— No. 12. —

No. 12.
Minute by the Hon. Gen. Low.
19 May 1855.

MINUTE by the Honourable General *Low.*

Proposed Reorganisation of the System of Civil Administration in Bengal, including the Reunion of the Offices of Collector and Magistrate.

Dated 19 May 1855.

I HAVE no doubt that the duties of magistrate of a district can be well performed in Bengal, as we know them to be in other parts of India, by an European officer who also holds the office of collector of revenue, provided that he has a sufficient number of zealous and trustworthy men to execute his orders; but if Government can afford to give adequate salaries to both, I think, for the reasons so well stated by our honourable colleague Mr. Grant, that it would be a more permanently effective measure to keep the very different sort of duties and pursuits of collector and magistrate in the hands of two separate officers; so that each of them may have the power to devote his whole time to his own line of employment, an object which in the case of the magistrate is in a peculiar degree desirable.

But the magisterial work of a district, in a large sense of that expression, can never be thoroughly well done till we shall have an efficient body of native police officers, down to the peons; and I fear that many years must yet elapse before such an improvement in the moral feelings and the habits of the inhabitants generally of Bengal shall have been brought about, as to render it possible for us to have a complete set of good police native officers of all grades in any one district; that is no reason, however, why we should not persevere in our endeavours to find, or to form, such instruments as we require; on the contrary, we are bound in honour to do our utmost to effect that most desirable change in our native police officers; and I know no plan, so far as it goes, so likely to be successful towards the ultimate attainment of that object, as that which is so well described in the 34th paragraph of the report, dated Calcutta, 18 August 1838, by the commission, of which Mr. W. W. Bird was the chairman, and of which, for convenient reference, I herewith subjoin a copy.

19 May 1855. (signed) *J. Low.*

Paragraph 34.—" From all this most unquestionable testimony, it is obvious that the allowances of this class of officers, not being sufficient to enable them to keep up an appearance corresponding with their situation, they must take, in some shape or other, from the people what the Government refuse to allow, and thus the Government, in fact, impose upon the community the payment of whatever sum, short of the allowed salary, is necessary for their decent subsistence. An increase to that extent, therefore, if only to remove a fair justification for exaction, seems indispensably requisite. Moreover, it is impossible to expect in thannadars an exemption from those motives and feelings which actuate all other classes of mankind, and accordingly the same rewards and inducements must be laid before them. If it be necessary to retain the services of respectable natives for these appointments, not only should their salaries be increased to such amount as will enable them to keep up at least a creditable appearance without exaction, but they must have something to look forward to; and despair of ever being able, by any exertion or good conduct on their part to better their situation beyond the actual receipt of 25 rupees a month, must no longer be allowed to drive them to make the most of their opportunities. Grades of thannadars should be established in the same manner as there are classes of moonsiffs and sudder ameens, promotion to the higher grades being held out as the reward of length of service and certified good conduct. Such system has been found to succeed in the judicial department, and there is no reason to doubt that it would be equally successful with the police."

No. 13.
Minute by the Hon. B. Peacock.
15 May 1856.

— No. 13. —

MINUTE by the Honourable *B. Peacock.*

Proposed Reorganisation of the System of Administration in Bengal, including the Reunion of the Offices of Collector and Magistrate.

Dated 15 May 1856.

I HAVE read the whole of the papers connected with this subject with that care and attention which the importance of it demands.

It appears to me that in theory the union of the offices of collector and magistrate is extremely objectionable; and judging from the practical operation of it during the short period in which the system was in force in the Lower Provinces of Bengal, I think that it would not be wise to revert to it.

From the year 1780 to 1787 the offices of judge and collector were held by different persons. But in the latter year it was resolved that the office of judge should be held by the person who had charge of the revenue, and from that time until the year 1793 the several duties of collector, judge, and magistrate were discharged by the collector.

In 1793 the Marquis Cornwallis determined to vest the duties of collecting the revenue and of administering justice in separate officers. In his minute upon that occasion he made the following remarks: "There is no class of men which Government should watch with greater jealousy, and over whom the regulations should have a stricter control than the officers who are intrusted with the collection of the revenue. It is necessary to arm them with powers to enforce their demands in the first instance, otherwise individuals, under the pretext of disputing the justness of it, might protract the payment of what is due from them, and render the collection of the public revenue either impracticable or an endless source of trouble and litigation. But to prevent the abuse of this power there should be courts of justice ready to punish oppression and exaction, and the people must be satisfied that the remedy will be certain and effectual, and that it can be expeditiously obtained. Accordingly, by Regulation 2, 1793, the office of collector was separated from that of judge and magistrate, and it was not until after the year 1821, viz. about the year 1829, that the offices of collector and magistrate were again united under the provisions of Regulation 4 of 1821. Many of the reasons which were assigned in the preamble of Regulation 2 of 1793, for withdrawing from the collectors their judicial powers may be now urged with equal force against reinvesting them with that portion of the judicial powers which are now vested in the magistrate, and which have been greatly increased since that date."

The following is an extract from the preamble of Regulation 2 of 1793:—

"Exclusive of the objections arising to these courts from their irregular summary, and often *ex parte* proceedings, and from the collectors being obliged to suspend the exercise of their judicial functions whenever they interfere with their financial duties, it is obvious that if the regulations for assessing and collecting the public revenue are infringed, the revenue officers must be the aggressors, and that individuals who have been wronged by them in one capacity can never hope to obtain redress from them in another."

"The collectors must not only be divested of the power of deciding upon their own acts, but must be rendered amenable for them to the courts of judicature, and collect the public dues subject to a personal prosecution for every exaction exceeding the amount which they are authorised to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it."

The offices having been separated in 1793, and reunited in 1821, continued to be held by the same officer until they were again separated in consequence of the Report of the Police Committee presented in 1838.

In that Report, paragraph 8, the Committee say, "To the union of magistrate and collector injurious effects are generally attributed. The union which formerly existed between the offices of judge and magistrate was not so prejudicial, because police was the primary object with the judge and magistrate; but it has been secondary with the magistrate and collector. Civil business, it has been observed, could wait, but the Government cannot wait for its revenue.

In

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In neither case is such a union desirable." In paragraph 12 they say, "The majority of the Committee, in concurrence with almost the whole of the gentlemen, both in and out of the service, who have been asked their opinions, think decidedly that the efficiency of both departments would be much better secured, generally speaking, by intrusting the superintendence of each to a distinct functionary." Mr. Smith in his Minute, Appendix C., remarks, "Nothing can be worse than the union. It is wrong in theory and evil in practice. I need not say more on this subject, as I believe out of Calcutta the opinions of the service are unanimous." With this experience I think the reunion would be taking a step in the wrong direction. There is a considerable difference between the revenue systems of Madras and Bengal; but I think it may not be out of place to refer to the remarks of the commissioners for the investigation of alleged cases of torture in Madras upon the subject of disuniting revenue and police functions.*

I concur with Mr, Grant in thinking that it would be objectionable to render the judge of the district subordinate to the Commissioner of Revenue and Police, or to equalise the salaries of the judge and of the collector.

(signed) *B. Peacock.*

15 May 1856.

— No. 14. —

No. 14.
Letter from C. T. Buckland, Esq., to Cecil Beadon, Esq.
4 June 1856.

LETTER from *C. T. Buckland*, Esq., Junior Secretary to the Government of Bengal, to *Cecil Beadon*, Esq., Secretary to the Government of India, Home Department.

Judicial.—No. 1690.

Sir, Dated Fort William, 4 June 1856.

I AM directed to forward, for the purpose of being laid before the Right Honourable the Governor-general of India in Council, the accompanying copy of a minute recorded by the Lieutenant-governor under date the 30th April last, together with its annexures, having reference to the improvement of the police and the administration of criminal justice in Bengal.

(signed) *C. T. Buckland,*
Junior Secretary to the Government of Bengal.

— No. 15. —

No. 15.
Minute by the Hon. the Lieut.-Governor of Bengal.
30 April 1856.

MINUTE by the Honourable the Lieutenant-Governor of *Bengal.*

POLICE AND CRIMINAL JUSTICE IN BENGAL.

Police.

For a long series of years complaints have been handed down from administration to administration regarding the badness of the mofussil police under the Government of Bengal, and as yet very little has been done to improve it. Such efforts as have occasionally been made for this purpose, have been usually insufficient to meet the greatness of the evil, partial remedies have failed to produce any extensive benefit, and during long intervals the Government has appeared to fold its hands in despair, and to attempt nothing new, because the last tried inadequate measure had ended in inevitable disappointment.

2. Meantime the ill success of our administration in this particular has been an endless theme of reproach to the Government, accompanied often by the grossest exaggerations, and very rarely by any sound and practical suggestions for

* Paras. 79 to 86.

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for improvement.* And the weight and moral authority of the Government have undoubtedly been affected by contiuual invective on a subject regarding which, while little or no defence was attempted, the Government yet appeared indisposed to make any real effort towards reform.

Former Measures.

3. For what, after all, has been done to improve the police during the last 30 years?—We have ceased, it is true, to expect integrity from darogahs with inadequate salaries and large powers, surrounded by temptations and placed beyond the reach of practical control; and we have somewhat curtailed the excessive and unmanageable extent of our magistrates' jurisdictions by the gradual establishment of 33† subdivision magistrates. But beyond this, and not speaking at present of the special and peculiar machinery lately set up in a few districts for the suppression of dacoity, I know not what else has been attempted; and even with regard to these two instalments of improvement, the halting hesitating way in which they have been effected, has prevented the full benefit which might otherwise have been expected from them. Before the first of these improvements, our stipendiary police in the Regulation Provinces consisted of some 484 darogahs or thannadars scattered at distant intervals over a territory of 150,000 square miles, and a population of 35 million souls; being, say, one darogah, or superior police officer, to 309 square miles and 72,314 souls. Each of these potent functionaries was paid 25 rupees a month, avowedly less than he could live and move about upon; and each had under him, generally, a mohurir or clerk, and a jemadar or head constable, on salaries ranging from four to eight rupees a month each, but with powers equal on most occasions to those of the darogah himself. Subordinate to these, at each thannah, was an establishment of from 10 to 20 burkundauzes or constables, often deputed with large powers into the interior, and paid each man from 3-8 to 4 rupees a month, a salary notoriously inadequate. It was a step in the right direction, doubtless, when the Government of Lord Auckland determined thenceforth to pay no darogah less than 50 rupees per mensem, and to allow to 100 of the number 75 rupees, and to 50 of them 100 rupees per mensem. But the good of all this was tarnished by the omission to do anything for the lower grades of police officers. For it was impossible to become a good darogah without an apprenticeship; and when the apprenticeship was to be served in the midst of great power, great temptation, and the traditions of unavoidable corruption in the station of a thannah mohurir on 7 rupees a month, what was to be expected from such a training?—or how, train the darogah as you might, could you expect purity and integrity until you had cleansed away from about him the foul atmosphere of corruption necessarily engendered by the aggregation of ill-paid and unscrupulous underlings, with whom bribery and extortion were almost a necessity, and had long been the habit of their lives?

Recent Recommendation.

4. This great evil has been more than once commented upon by Mr. Dampier, the late superintendent of police, and a remedy proposed. I trust that it may now shortly undergo reform, as I last year submitted to the Government of India an earnest recommendation founded on Mr. Dampier's propositions for an increase to the salaries of mohurirs, jemadars, and burkundauzes by a system of gradation.‡ And unless financial difficulties interpose, I cannot doubt that this measure must ultimately be honoured by the approval of the Governor-General in Council. But if this be not granted, all thought for the improvement of the police will, I fear, be but thought thrown away.

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* Several very valuable suggestions have been submitted to Government from time to time by the late superintendent of police, for the improvement of the system, and I shall have occasion to avail myself of them, more or less, in the measures I am about to propose.

† This is now the number of subdivisions in the Regulation Provinces.

‡ Full details of the proposed measure, and cogent arguments for its adoption, will be found in Mr. Grey's letter to the Government of India, No. 774, of 30 April 1855. It was proposed to divide mohurirs into three grades, on 30, 35, and 40 rupees per mensem. Jemadars into three grades, on 10, 15, and 20 rupees; and of the burkundauzes, one-fourth at 6 rupees per mensem; one-fourth on 5 rupees, and the rest on 4 rupees. The whole increased cost to be incurred would be 3,38,609 rupees per annum.

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Subdivision Magistracies.

5. The establishment of subdivision magistracies had in it, doubtless, the elements of a very important reform, and as far as it has been yet carried has certainly effected much good. But as yet it has been carried to a very small and inadequate extent, and it has therefore seemed to the public eye almost to have operated as a failure. Beyond all doubt we shall ever fail to establish a good and trustworthy system of police unless, together with other improvements, we establish a close, constant, and vigorous control over our police agents, and a ready access to justice for all persons, so that the appeal of the weak against the strong may be at all times possible and effectual.

6. Throughout the length and breadth of this country the strong prey almost universally upon the weak, and power is but too commonly valued only as it can be turned into money. The native police, therefore, unless it be closely and vigorously superintended by trustworthy officers, is sure to be a scourge to the country in exact proportion to its strength and power. For this indispensable superintendence no adequate provision has ever yet been made, nor can any provision be considered adequate which does not supply at least one capable and trustworthy magistrate for every two or at most every three thannahs. At present, however, our establishments do not comprise more than 70 executive magistrates, covenanted and uncovenanted, over four hundred and eighty-four* thannahs, being at the average rate of about seven and a quarter thannahs to each magistrate, a proportion much below what is requisite: and the distribution of even this number of magistrates is extremely irregular.

Village Chowkeydars.

7. Of the vast importance of the rural police, the village chowkeydars, and the strong necessity for fortifying and improving their character and position, there has never been but one opinion; and from as far back as 1784, down to the date of Lord Hastings' celebrated "Police Minute," and again from that time till the Police Committee of 1837, down to Mr. Dampier's frequent comments on the subject in his annual reports, all who have written or spoken on the subject have invariably urged the necessity of directing constant and vigilant attention to the preservation and improvement of this ancient institution of the country. Yet though more than one expedient for this purpose has been devised and discussed, nothing has ever been carried into execution; and it is a lamentable but unquestionable fact that the rural police, its position, character, and stability as a public institution, has in the Lower Provinces deteriorated during the last twenty years. It is now diminished in number, and impaired in efficiency, while its rights have been seriously and successfully attacked and undermined; so that, unless some speedy measures be taken to save it, it is in danger of perishing altogether from the face of the land, and passing out of use, if not out of remembrance.

8. Thirty years ago, the old opinion was still prevalent among the magistrates, an opinion handed down from the Dowdeswells, Elliots, Bayleys, and other magistrates of renown, that it was the highest duty of a magistrate to uphold the village police, to cause all vacancies to be properly filled, and to see to the fair payment of all members of the body. There is no doubt that these exertions were in those days effectual towards the object in view, and that the village police were kept from falling into decay by the determined and persevering interest shown by the magistrates in their behalf.

9. The manner in which Mr. W. B. Bayley, when magistrate of Burdwan, in 1811, exerted himself to keep up the efficiency of the village police, which has often been held up as an example to succeeding magistrates, has been explained by him in the following words, quoted from his report to Government of 1812: —"I explained," he says, "to the talookdars, munduls, &c., the necessity of giving a sufficient provision to their respective chowkeydars, and urged to them as

* I find this number of thannahs in the Regulation Provinces in the Appendix to the Circular Orders of the Superintendent of Police, printed in 1854.

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as strongly as I could, the advantage which would result to the prosperity of the country and its inhabitants, by furnishing to every chowkeydar such means of subsistence as might prevent them from committing thefts and robberies, in order to support themselves and their families. Upon this principle I have to the utmost of my power prevented all attempts on the part of the landholders, &c., to resume any portion of the Chakeran lands, or to remove or appoint any chowkeydar without a previous inquiry into their conduct and character by the magistrate."*

10. The great difficulty indeed, regarding the village police, which has been commented upon by all who have directed their attention to the subject since the beginning of the century, is that they are inadequately and uncertainly paid. They are kept in a permanent state of starvation, and though in former days magistrates battled for them with unwilling zemindars and villagers, and were encouraged by Government to do so, it has been discovered in later times that this is all against the law; and magistrates, contrary to the doctrine of earlier times, have been actually prohibited from interfering in favour of village watchmen, it being ruled that this is altogether an affair of the people themselves, who may pay watchmen or not, just as they think fit. Village watchmen are now declared to have no legal right to remuneration for service, and (the help of the magistrate being withdrawn) they have no power to enforce their rights even if they had any rights to enforce. Hence they are all thieves or robbers, or leagued with thieves and robbers, insomuch that when any one is robbed in a village, it is most probable that the first person suspected will be the village watchman.

11. Mr. Millet made a careful inquiry into the law on this subject in 1842, and came to the conclusion that it was optional with the zemindars and villagers to maintain the village police or not. I quote in the margin † a part of his Report to the Bengal Government on this subject.

12. Since that date, although very great advantage has been taken by the zemindars and others of the law as thus declared, to get rid of chowkeydars, and often to appropriate their old-established service lands, a slight check has been given to the progress of this deterioration by a decision of the Sudder Court, in April 1854, whereby it was decided that an obligation lay upon a zemindar to appoint to a vacant chowkeydarship. It was, however, not decided, and on the contrary, the judges were divided on the point, whether a magistrate could enforce this obligation by fine, without which the obligation may be little more than nominal, and if so, the condition of the chowkeydar is likely to remain as starved and helpless as ever. Yet, miserably impaired as the institution of the village police has become, it is still true that no police can be effective without their help, and that, as stated in the Minute of Lord Hastings, dated 2nd October 1815, "it is from the chowkeydars that all information of the character of individuals, of the haunts and intentions of robbers, and of everything necessary to forward the object of police, must ordinarily be obtained; they are the watch and patrol to which the community looks for its immediate protection, and on the occurrence of a crime the darogah's only mode of proceeding is to collect

* Mr. Bayley's Report to Government of 1812.

† It appears from the 12th Article of the Regulations of the 7th December 1792, and parts of the correspondence above extracted, that it was not the intention of the Government to interfere with the establishments of the common village police, further than by registration, and by placing them under the control of the darogahs, to make them more efficient auxiliaries to the Government police.

"That article was embodied in the Code as Section XIII., Regulation XXII., of 1793, and the registration of the village police, and in addition to them, of all watchmen or guards employed by individuals, was enforced by the penal provisions of Section XXI., Regulation XII., of 1807."

"Section XIII., Regulation XXII., of 1793, was rescinded by Section II., Regulation XX., of 1817, but re-enacted in substance and extended in Section XXI. of the same Regulation, although the landholders and other persons, to whom the right of nomination to vacancies in the village watch belong, are required to transmit the names of the persons they may appoint to the police darogahs; the law does not empower the magistrates to compel such nomination, or interfere respecting the allowances, whether in land or money, of the village chowkeydars actually employed, and the magistrates have been directed" (by order of the Nizamut Adawlut, 26 August 1831) "to confine their interference with the chowkeydars paid by the people, to those cases in which they are authorised to interfere by the existing Regulation." And Mr. Millet, in another part of the same Report, intimates his opinion, "that it is at the option of the zemindars and the cultivators to maintain or discharge the village chowkeydars."

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collect the watchmen of all neighbouring villages, and to question them as to all the circumstances, with a view to get from them that information which they only can afford."

13. The village chowkeydars are, in short, the foundation of all possible police in this country, and upon their renovation, improvement, and stability depends the ultimate success of all our measures for the benefit of the country, in the prevention, detection, and punishment of crime. To what a state of corruption, however, this most important branch of the police system had fallen, was strongly illustrated by the late Mr. Bethune, in his Minute of the 27th May, 1851, of which the following is an extract:—

"The evidence I have seen of this is now thirteen years old, but the complaints recently made of outrageous dacoities, and acts of violence, point rather to a deterioration than to an improvement of the practical working of the system since that time. I took the following striking comparison from Speede's Criminal Statistics of Bengal, in which some of the results obtained by the police commissioners in 1837 have been digested and arranged in a tabular form. The returns made to Governnent for the years 1833, 1834, 1835, 1836, show the average number of persons annually convicted for crimes and offence of all kinds in those years, to be 31,843;* and, taking the population of the districts to which these returns apply to have been 38,717,874, as estimated in the magistrates' returns, the proportion is about 1 convict to 1,219 persons.

"The commissioners of 1837 obtained also a return of chowkeydars dismissed from the police force during the years 1835, 1836, 1837,† with the causes of dismissal. From this return, it appears that the whole number of chowkeydars (with the exception of six districts from which accounts had not been received when the table was compiled) was 1,30,305, and, therefore, were they no worse than the rest of the population, the number of persons among them guilty of every kind of offence known to the calendar, at the rate of 1 in 1,219, would be under 107 annually, or 321 in the three years included in the return. What were the facts? The whole number of chowkeydars dismissed for misbehaviour in those three years, instead of 321, is 1,130.

Of whom, for Murder and Thuggee	19
Burglary	39
Robbery and Theft	357
	415

that is to say—

"Nearly one-fourth more, in proportion to their number, for these heinous crimes, than were convicted in all the Lower Provinces of Bengal for all offences of every kind.

"The full complement of 1,130 is made up as follows:—

Class 1st.		
Murder and Thuggee	19	
Burglary	39	
Robbery and Theft	357	
		415
Class 2nd.		
Embezzlement or Forgery	42	
Perjury, False Evidence, or False Complaint	55	
Bribery, Extortion, or Oppression	28	
Affrays, Assaults, or Wounding	96	
Accessaries to Crimes	70	
Concealing Crimes or Aiding Escapes	178	
		469
Class 3rd.		
Bad Character or suspected of Crime		246
		1,130

"I have

* Speede's Criminal Statistics, p. 149; ditto, p. 174. † Speede's Appendix, p. 7.

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"I have not included in this list—

31	dismissed for contumacy.		
33	„	„	intoxication.
7	„	„	being asleep on duty.
71			

meaning only to select those offences which it is the direct object of a police force to prevent and discover."

Itseems to me that this statement renders it superfluous to enumerate in detail the expressions of dissatisfaction, however strongly worded, of those who understand the working of the system. The whole is summed up by the commissioners in the following terms:—

"49. The most urgent necessity exists for a thorough revision throughout the country. The establishment (of village watchmen) is described not only as utterly useless for police purposes, but as a curse instead of a blessing to the community. Is even a question whether an order issued throughout the country to apprehen and confine them would not do more to put a stop to theft and robbery than any other measure that could be adopted."

14. Various plans have been proposed for amending this state of things, and a good deal of paper has been covered with written discussions regarding them, but nothing has ever been done; so that many persons have come to think it a thing impossible to do any good in that direction, and have ceased from all effort accordingly.

15. Not to disinter any more ancient projects of this kind, I will now go no further back than the last, which was a plan submitted to the old Legislative Council of India by the Marquis of Dalhousie, as Governor of Bengal, on the 11th July 1853, and which was intended to give to the Government of Bengal the power of extending the system of Regulation XXII., 1816, now applicable only to towns in which a covenanted magistrate is stationed, to all parts of the country at discretion. This, however, was objected to by the Honourable Mr. Peacock, on very valid grounds, as set forth in his Minnte of the 6th March 1854, in which it was shown, conclusively, that the length to which the proposed law would go would involve a violation of the engagement entered into by Government at the time of the Permanent Settlement. Accordingly, the bill of Lord Dalhousie was modified, so as to exclude the rural police, and made to apply only to populous towns, stations, and bazaars, and in that shape is at this moment pending before the Legislative Council.* Regarding rural police, Mr. Peacock, while showing very strong reasons why it would be in his judgment impolitic to levy, as proposed by Lord Dalhousie's Bill, rent tax of 5 per cent. for

* As the establishment of this town police is a matter of great importance, and the method of taxing the inhabitants of towns for the purpose requires the most careful consideration, I desire to quote in this place the remarks I have addressed to the Legislative Council on the subject:—

"If the existing system be preserved, the Lieutenant-Governor would advise that the maximum limit of 2 rupees be abolished. He has found this very generally complained of as unjustly favouring the rich, and causing obvious and invidious inequality of taxation."

"The plan, however, which, in the Lieutenant-Governor's deliberate judgment, is the most suited to the people, and would nowhere be unpopular, would be a system of town duties, levied and managed by a head punchayet and a local collector, under the control and direction of the magistrate. This is a mode of taxation which the natives are quite accustomed to in their hauts and markets, which they accordingly prefer to any direct taxation, and under which they might gradually be induced to contribute more largely than would be required for mere watching; so as, without incurring unpopularity, to allow of the introduction of other municipal improvements into the principal towns."

"The present town chowkeydaree system, with its always ill-chosen, reluctant and jobbing punchayets, its favouritism and inequality, its inquisitorialness, its direct monthly calls for cash, its summonses, its notices and its harassing concomitants of distress and sale, is, the Lieutenant-Governor is thoroughly persuaded, one of the most unpopular institutions we ever forced upon the people, and of this, which is well known to the Lieutenant-Governor from extensive personal inquiry and observation, the papers now submitted afford good proof. To extend this very unpopular system, will be very distasteful to the people; but since there ought to be a police in our large towns, and this police must be paid by means of a taxation of some kind, the Lieutenant-Governor would desire to record his conviction, that the safest and best way of doing this (at all events in the Lower Provinces of Bengal), and the way most acceptable, or at any rate least unacceptable, to the people, will be by re-introducing a system of town duties in a form modified to suit the occasion."

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for the support of that establishment, added, "I would not exempt the owners or occupiers of land from any liability to contribute to the support of village watchmen which may attach to them according to the custom and usage which has prevailed in each village. The custom to maintain watchmen seems to have existed from the earliest times in every village. I cannot think that it could ever have been intended that the maintenance of that class of officers should fall into disuse, or be considered as merely optional with those who have always contributed to their support. Where lands have been appropriated to their support, they should continue to be so. Where the watchmen have been paid by the contributions from the village community, either in money or grain, such contributions should be considered obligatory. I find that the continuance of the village watchmen is contemplated by the regulations passed at the time of the Permanent Settlement."

16. Convinced by the reasoning of Mr. Peacock, Lord Dalhousie assented to the proposed modification of his Bill, by which the rural police was excluded from its operation. But he suggested that the principle involved in the observation of Mr. Peacock, regarding the reasonable liability of owners and occupiers of land to contribute to the rural police according to established usage, might, if fully worked out, be rendered effectual to the end he had in view, the supplying gradually of the great and crying want of these Lower Provinces, to wit, an effective rural police.* With this view he suggested that a local investigation should be made in every village, throughout every zillah, of the liabilities to which the village is subject in respect of the maintenance of village police, in order to found thereon a legislative measure for the improvement of that institution.

17. That investigation has now been completed.

Administration of Criminal Justice.

18. I am satisfied, however, that it will be vain to improve the agency for the detection and apprehension of criminals, unless we improve also the agency for trying them.

Police reform, in India at least, is a word of large signification, and extends to our criminal judicatories as well as to the magistracy and the constabulary organisation. At present our criminal judicatories stand in need of much amendment, and unfortunately the method of amending them is a question which admits of much diversity of opinion.

19. They certainly do not command the confidence of the people.

20. That this is the case may, I think, be inferred from many parts of Mr. Dampier's elaborate reports. I have myself made much personal inquiry into this matter during my tours, which have carried me over nearly the whole of the Regulation Districts, and have brought me into communication with all sorts and conditions of men, official and non-official. Whether right or wrong, the general native opinion is certainly that the administration of criminal justice is little better than a lottery, in which, however, the best chances are with the criminals; and I think this also is very much the opinion of the European mofussil community.

21. No complaint is more common among magistrates and police officers of every grade than that of the disinclination of the people to assist in the apprehension and conviction of criminals. From one end of Bengal to the other, the earnest desire and aim of those who have suffered from thieves or dacoits, is to keep the matter secret from the police, or, failing that, so to manage as to make the trial a nullity before the courts. Something of this is due perhaps to the natural apathy of the people; though it cannot fail to be observed, on the other hand, that where they have any object to gain, the same people show no apathy or unreadiness, but remarkable energy and perseverance, in civil and criminal prosecutions. More, no doubt, is due to the corruption and extortion of the police, which causes it to be popularly said that dacoity is bad enough, but the subsequent police inquiry very much worse. But after allowing for both these causes,

* Lord Dalhousie's Minute, 14th April 1854.

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causes, no one conversant with the people, can have failed to remark how much of their strong unwillingness to prosecute, is owing to the deep sense which pervades the public mind of the utter uncertainty of the proceedings of our courts, and the exceeding chances of escape which our system allows to criminals; often have I heard natives express, on this point, their inability to understand the principles on which the courts are so constituted, or so conducted, as to make it appear in their eyes as if the object were rather to favour the acquittal, than to ensure the conviction and punishment of offenders; and often have I been assured by them that their anxious desire to avoid appearing as prosecutors arose, in a great measure, from their belief that prosecution was very likely to end in acquittal, even, as they imagined, in the teeth of the best evidence, while the acquittal of a revengeful and unscrupulous ruffian was known, by experience, to have repeatedly ended in the most unhappy consequences to his ill-advised and imprudent prosecutor.

22. That this very general opinion is not ill-founded may, I think, be proved from our own records.

23. Appended to this minute is a note and certain statistical returns, prepared by Mr. Secretary Buckland, from which it may be gathered that for 14 burglaries committed, only one burglar is punished; and that even in thefts, which are matters of easier detection and punishment, the average proportion of convictions is only of three persons to eight offences.

24. These two descriptions of offences are offences punishable by magistrates. In the more heinous cases tried by the sessions judges, it will be seen, from one of the statements annexed to Mr. Buckland's note, that an average of 1,237 persons were annually acquitted to 1,935 convicted, being a ratio of two to three. This is the more remarkable because, in the practice of our courts, every case sent by a magistrate before a sessions judge is as carefully heard by the magistrate, on both sides, as if the magistrate had himself to pass sentence, every magistrate being empowered by law, and almost bound by practice, to send for and examine witnesses to the defence, as well as for the prosecution, and strictly enjoined to send no case to the sessions regarding which he does not see reason to believe that a conviction will follow. And the magistrates are unfailingly censured if they commit on what the sessions judge and the Sudder Court may think insufficient, *i. e.* not perfectly sufficient grounds for committal, *i. e.* for conviction. That under such a system a proportion of two to three committed prisoners should be acquitted at the sessions, nearly every one of whom must have been considered by the magistrate guilty on the evidence, is of itself a very startling fact, and one which cannot but leave a painful impression of the working of our institutions.

25. A sessions judge is obliged to refer for the orders of the Sudder Court the cases of all criminals regarding whose guilt he may differ in opinion with his Mahomedan assessor, or law officer, and also many classes of cases requiring, in his opinion, a higher punishment than imprisonment for seven years. It appears from Mr. Buckland's statements that the average annual result of such references is, that no less than 148 persons are acquitted to 332 convicted; and this, it will be remembered, is in cases in which two judicial officers* must, by the nature of the case, have found the prisoner guilty on the evidence. So that the solemn judicial conclusions of tribunals in various parts of the country, in each of which two minds have deliberately concurred, are found, or supposed to be, absolutely erroneous by the higher court, in the proportion of 148 to 332.

26. From any sentence passed by a magistrate beyond a fine of 50 rupees, or one month's imprisonment, there may be an appeal to the sessions judge, and from every sentence passed by a sessions judge there may be an appeal to the Sudder Court. This license is largely taken advantage of, so that a great number of cases undergo two complete trials. And, indeed, in order to encourage appeal, and give appellants every possible advantage, and no chance of disadvantage, it is provided† that appeal courts may remit or mitigate to any extent,

* *i. e.* The magistrate and the sessions judge, or the magistrate and the Mahomedan law officer.
† Act XXXI. of 1841.

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extent, but must on no account enhance punishment. I have not at present any statement of the consequences of this system as regards sentences by magistrates, though I am well aware that it leads to a considerable abatement of the magistrates' convictions. As regards appeals from sessions judges to the Sudder the case is thus stated by Mr. Buckland. From 1843 to 1852 inclusive, the number of petitions of appeal average (annually) 248, the sentences being modified or reversed in 85 cases, and upheld in 152 cases. As the average number of prisoners in each case appears to be about two and a half, the annual average of prisoners convicted at the sessions (amounting to 1,935) suffers a reduction of 200 by the result of the appeal to the Sudder. Of the total 4,000 persons annually committed to the sessions for heinous crimes, it thus appears that the conviction of 1,735 takes place in the sessions effectually, and of 332 in the referred trials to the Sudder; so that of the whole number committed very nearly one-half is eventually acquitted.

27. That a very small proportion of heinous offenders are ever brought to trial, is matter of notoriety. It now appears that half of those brought to trial are sure to be acquitted. Is it to be expected, then, that the people should have confidence in our system, or that they should show any desire to assist the police, knowing as they do from experience, the miserable results to be obtained?

28. I must say that this appears to me the weakest point of our whole system, and that which most loudly calls for an effectual remedy. No doubt the badness of the police and the inefficiency of the tribunals act and re-act on each other, and both are concerned in bringing about the deplorable existing consequences. But until the tribunals are reformed, I can see no use in reforming the police, and I think it will be money thrown away to attempt the latter, unless we are determined vigorously to insist on the former. We have been hitherto debating about both for many years without much practical effect, and in the meantime, to take only one crime, and only the seven districts round about Government House, we have seen dacoities increase from 82 in 1841, to 524 in 1851. It is true that under a special agency, this has since been reduced to 111 in 1855. But the operations of this agency have shown more than anything else the utter inability of our ordinary institutions to cope with the enormous social evil that is ever rising up in defiance before it.

Inexperience of Magistrates.

29. Even if our tribunals were all we could wish, and if our police were fully reformed, what would it avail us so long as our superintending magistracy was for the most part in the hands of inexperienced, and therefore unqualified, young men? Yet this has not only been long the notorious fact, but peculiar and accidental circumstances, partly temporary and partly arising out of the constitution of the civil service, have at this moment made the inexperienced condition of the magistracy more observable than it has ever been before, while it seems certain that the evil during several succeeding years, is likely very seriously to increase. I have appended to this paper a note by Mr. Grey on this very subject, together with a tabular statement, from which it will appear that whereas in 1850 the average standing of magistrates was nine years and eight months, it had sunk in 1854 to eight years and five months, and is now, in 1856, so low as six years and ten months. "In 1850," says Mr. Grey, "there were only two magistrates below the standing of seven years. Now there are 15 such. The youngest officer officiating as a magistrate in 1850 was of five years' standing. The youngest officer now officiating as magistrate is of less than three years' standing." Those who are conversant with the working of our system are aware that this is, under present rules, an evil that cannot be resisted; while it exists, although certain of our young magistrates often display efficiency and ability beyond their years, yet on the whole our magistracy is losing credit and character, and our administration is growing perceptibly weaker, and yet I grieve to be obliged to affirm that the evil will infallibly increase within the next three years, unless an early remedy be applied. Does anybody imagine that, while this lasts, our Bengal police can be reformed?

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Five Measures Proposed.

30. It appears to me then that in order to an effectual improvement of the police in the Lower Provinces, the following principal measures are indispensably necessary :—

(1.) The improvement of the character and position of the village chowkeydars or watchmen.

(2.) Adequate salaries, and, I may add, fair prospects of advancement to the stipendiary police.

(3.) The appointment of more experienced officers as covenanted zillah magistrates.

(4.) A considerable increase in the number of the uncovenanted or deputy magistrates.

(5.) An improvement in our criminal courts of justice.

Improvement of Chowkeydars.

31. Regarding the first of these measures, I have said that the inquiry suggested by Lord Dalhousie into the actual condition of the village police has been completed. By a circular, dated 13th November 1854, the several zillah magistrates were directed to adopt immediate measures for the collection of full and accurate information regarding the position of the village chowkeydars, showing the number that are regularly kept up, by whom they are appointed, by whom paid, and the amount and nature of their receipts. The magistrates were told to call for this information, in the first instance, through the thannah police, and subsequently to test the accuracy of the information furnished to them by making inquiries, in person, in different parts of each district, as well as by one or two trustworthy officers specially deputed for that purpose. The results were to be submitted to Government in a prescribed tabular form, and in the native language as originally prepared.

32. The tabular statement, so supplied, have been translated into English in the secretary's office. They appear for the most part to have been prepared with great care and accuracy, and they furnish an important body of information.

33. The following is an abstract of the results of this inquiry :—

Division.	DISTRICT.	Number of Villages.	Number of Houses.	Number of Chowkeydars.	Number of Houses to each Chowkeydar.	HOW APPOINTED.	HOW PAID.
Patna.	Chumparun -	3,578	1,81,881	3,809	48	By Gomastahs and head villagers -	Annually by grain; some have from 5 cottahs to 20 beegahs of land each.
	Sarun -	4,347	2,10,425	5,926	36	Zemindars - -	Ditto by cash, from 4 annas to 36 rupees, a few having cloths given them; by grain from 2 to 24 maunds; by land from 10 cottahs to 11 beegahs each.
	Patna - -	3,908	1,32,122	4,380	30	Zemindars and villagers, confirmed by magistrate.	Ditto by cash, from 8 annas to 36 rupees each; by grain from 2 to 21 maunds each; by land from 4 cottahs to 12 beegahs.
	Shahabad - -	4,948	2,19,949	6,283	35	Zemindars or head villagers, or both.	Ditto cash, 4 annas to 36; grain 20 seers to 30 maunds; land 10 cottahs to 24 beegahs each.
	Behar - -	4,343	1,42,229	4,582	31	Landholder's omlah and the villagers.	Ditto cash, 12 annas to 36 rupees; grain 2 to 25 maunds; land 1 beegah to 5 beegahs each.
	TOTAL - -	21,124	8,86,606	24,980	—		

Division.	DISTRICT.	Number of Villages.	Number of Houses.	Number of Chowkeydars.	Number of Houses to each Chowkeydar.	HOW APPOINTED.	HOW PAID.
Bhaugulpore.	Tirhoot - -	5,473	3,33,485	7,895	42	Zemindars and some by villagers.	Annually by cash, 1 rupee 4 annas to 45 rupees, or land 1 cottah to 2 beegahs each, and a few receive a little grain.
	Purneah - -	5,267	2,45,181	7,841	31	Landholders or villagers.	Ditto cash, 12 annas to 36 rupees each; some receive a little grain.
	Monghyr - -	2,642	1,32,514	3,086	43	Zemindars - -	Ditto cash, 1 rupee 2 annas to 36 rupees; land 8 cottahs to 15 beegahs each.
	Bhaugulpore -	3,740	1,71,482	3,687	47	Ditto - - -	Ditto cash, from 8 annas to 57 rupees; land from 1 beegah to 20 beegahs each.
	Total - -	17,122	8,82,662	22,509	—		
Rajshahye.	Maldah - -	1,950	91,817	1,568	58	By the head villagers	Annually cash, 1 to 48 rupees each, some have grain.
	Dinapore - -	8,517	2,05,051	5,592	37	Zemindars or head villagers.	Ditto cash, from 4 annas to 42 rupees each.
	Rungpore -	3,383	2,17,471	5,077	43	Some by headmen, generally by zemindar's omlah, confirmed by the magistrate.	Ditto cash, from 2 to 36 rupees each; in one thannah a little paddy is added.
	Bograh - -	4,964	1,23,982	3,100	40	Head villagers, a few by the zemindars.	Ditto cash, from 1 to 36 rupees each.
	Pubnah - -	3,526	1,81,811	3,611	50	Headmen - -	Ditto ditto, 3 to 52 rupees each; a little grain given to some.
	Rajshahye -	3,416	1,41,913	3,839	37	Ditto - - -	Ditto ditto, 6 to 48 rupees each; one man has 15 beegahs of Chakeran.
	Total - -	25,756	9,62,045	22,787	—		
Dacca.	Mymensing -	13,162	3,06,133	4,080	75	Head villagers or police.	Annually cash, from 3 to 54 rupees each.
	Sylhet - -	6,937	2,24,386	3,259	69	Landholders and villagers	Ditto ditto, 1 to 30 rupees.
	Dacca - -	3,163	2,32,023	4,026	58	Head villagers -	Ditto ditto, 6 to 36 rupees each, and a few are said to be paid monthly from 1 to 3 rupees each.
	Backergunge -	2,357	1,78,104	3,051	58	Landholders - -	Ditto cash, from 7 to 42 rupees each.
	Furreedpore -	1,987	1,27,972	1,773	72	Headmen - -	Ditto, 1 to 52 rupees each; some have grain.
	Total - -	27,606	10,68,618	16,189	—		
Chittagong.	Tipperah - -	5,884	2,37,733	2,768	86	Headmen - -	Annually cash, from 2 rupees 8 annas 9 pie to 57 rupees 8 annas each.
	Noacolly - -	977	90,833	1,867	49	Ditto and police -	Cash, each Chowkeydar receives 12 annas per house monthly.
	Chittagong -	944	1,79,763	2,431	74	Head villagers -	Annually cash, from 6 to 30 rupees, some get grain too; and a few monthly at 2 rupees 8 annas each.
	Total - -	7,805	5,08,329	7,066	—		
Cuttack.	Pooree - -	4,584	1,10,814	2,822	39	By Gomastahs and headmen.	Annually, by cash from 1 to 48 rupees; land 1 beegah to 65 beegahs each.
	Cuttack - -	6,630	2,13,207	5,072	42	Zemindars, confirmed by the magistrate.	Ditto cash, 1 to 55 rupees; land from 1 beegah to 40 beegahs each.
	Balasore - -	4,317	96,457	1,978	49	Zemindars - -	Ditto cash, 4 annas to 25 rupees; land 1 beegah to 25 beegahs each.
	Total - -	15,531	4,20,478	9,872	—		

(continued)

Division.	DISTRICT.	Number of Villages.	Number of Houses.	Number of Chowkeydars.	Number of Houses to each Chowkeydar.	HOW APPOINTED.	HOW PAID.
Burdwan.	Midnapore -	11,198	2,95,145	9,123	32	Headmen or the magistrate.	Annually cash, 2 to 61 rupees; land from 4 beegahs to 143 beegahs each.
	Howrah - -	1,412	98,756	1,465	67	Zemindars - -	Ditto cash, from 19 rupees 4 annas to 39 rupees 12 annas, with some grain each.
	Hooghly - -	3,168	2,80,493	5,194	54	Zemindar and magistrate.	Ditto cash, 3 to 60 rupees; land 1 beegah to 36 beegahs.
	Burdwan - -	2,873	2,13,036	8,848	24	Ditto - - -	Ditto cash, from 12 annas to 72 rupees, some have some land.
	Beerbhoom -	6,928	1,88,182	10,950	17	Ditto, and some by Sirdar Ghâtwâls -	Ditto cash, from 12 annas to 130 rupees each; or land from 3 cottahs to 228 beegahs each; or land and grain, producing an estimated income from 25 to 42 rupees each.
		The Chowkeydars and the Ghâtwâls (who in Beerbhoom hold of the zemindar, but in Bancoorah of the Government) should have been distinguished.					
	Bancoorah { Villages -	2,879	1,25,618	Chowdars. 3,934	32	Zemindars or villagers, confirmed by the magistrate.	Ditto, from 8 annas to 71 rupees, and also in kind.
	Bancoorah { Ghats - -	1,127	28,389	Ghâtwâls. 4,325	7	By the magistrate -	By land held of Government under engagements with the old Rajah of Bishenpore, at from 2½ beegahs to 4,152 beegahs per man.
	Total - -	29,585	12,29,619	43,739	—		
Nuddea.	24-Pergunnahs	2,605	1,53,905	2,788	55	Headmen - -	Annually cash, from 3 to 220 rupees 11 annas, also in kind.
	Nuddea - -	3,054	2,13,576	4,134	52	Ditto - - -	Ditto cash, from 1 rupee 8 annas to 60 rupees; grain added in some parts.
	Jessore - -	4,126	2,16,256	4,189	52	Ditto - - -	Ditto cash, 1 rupee 8 annas to 48 rupees, and ditto ditto.
	Moorshedabad -	3,014	1,89,871	4,467	43	Zemindars or villagers, or both.	Ditto cash, from 1 to 48 rupees each, and must have some land or grain added.
	Baraset - -	1,981	96,901	2,157	45	Headmen - -	Ditto cash, from 11 rupees to 60 rupees each.
	Total - -	14,780	8,70,509	17,735	—		
	Grand Total -	1,59,309	68,28,866	1,64,877	—		

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34. It may be observed, as a general result of the inquiry, that, with few exceptions, the zemindar, or zemindar's agents, are found to nominate the chowkeydars, and this most commonly in the Bengal zillahs. In these latter zillahs, though the zemindars who nominate the chowkeydars seem to be primarily answerable for the payment of their wages, yet the ultimate payment falls upon the village ryots. In the Behar zillahs this seems to be not so generally the case, the "malik" or zemindar more usually in those zillahs having to incur the expense of paying the chowkeydars, who, however, in Behar, as elsewhere, often receive a part of their income in the shape of presents from the villagers in kind. I am aware also that, in some instances, in the Behar zillahs the liability to pay the chowkeydar's wages is disputed between the zemindars and the ryots. Where these disputes have been carried before the magistrate, I have found the liability of the zemindar usually enforced, though, as I have thought, with doubtful justice.

35. The

35. The number of houses to each chowkeydar's beat is seen to vary considerably—from eighty-six, the largest number, which occurs in Tipperah, to twenty-four in Burdwan.*

36. The general average for the whole of the Regulation Districts of the Lower Provinces is shown to be one chowkeydar to forty-one houses. This average is, however, affected by the introduction of ghâtwâls into the lists. The traditionally proper proportion is believed to be one chowkeydar to fifty houses.

37. The total number of villages by this return is 1,59,306, and of chowkeydars 1,64,877, being 1,034 chowkeydars to each village.

38. The average receipts of each chowkeydar, in land and wages, will be probably under-stated at two rupees a month. Assuming, however, two rupees a month as wages, whether in money, land, or kind, and one rupee a month as customary presents—a very high estimate—we have a total for the annual receipts of 59,35,572 rupees; and calculating at five for each house in these returns, the population would be 3,41,44,330, † upon whom the above amount of taxation would fall at the rate of 2¼ pie per head per annum, which is certainly a very light taxation, even at the high rate of receipts above assumed.

A Law Suggested.

39. What is, however, necessary to secure the old institution of a village watch from falling into utter desuetude, and for keeping it in a state of vigour sufficient for our present purposes, but doubtless to be further improved and reformed hereafter, is a law which shall enable a magistrate, on finding a village without a chowkeydar, or a chowkeydar without wages, to make a summary inquiry, and, according to the nature of the case, either to cause the nomination of a fit chowkeydar by the person or persons to whom the nomination may be proved by custom and usage to belong, or to cause payment of his wages at the rate found customary by the person or persons on whom the customary liability to pay such wages may be found to fall. Any very precise provisions would, I humbly think, be out of place at present. The people will not, I venture to say, feel it as any hardship that the magistrate should be empowered to make such inquiries, and to exercise such powers as I propose; on the contrary, they will assent to them, as in accordance with old customs, and as enforcing an acknowledged obligation; for the inquisition and the powers are such as were formerly very generally in use, and are even now employed by zealous magistrates in districts where the people are not yet fully aware of the actual law on the subject. It will only be if any minute system of tax-gathering on account of the village watch should be attempted that the law will be found to create any disaffection or dissatisfaction. At all events, I would desire to try the effect of the simpler method before resorting to any more complicated process. It may be safely, I think, reckoned upon, that, as soon as the law shall declare that the magistrate has the power which in former years he always used, and which has only lately been brought into question, the necessity for putting the law into force will very rarely arise.

40. It has been objected by some very competent advisers on such subjects, that even when all this shall have been done, we shall be as far as ever from our object; that the village chowkeydars, at the best, are an untrustworthy, unorganised rabble, and that no real improvement will be effected unless we get rid of them altogether, and organise a rural police according to the newest forms of occidental civilisation. And it is common with those who advocate this method of reform, to point to the 34,000,000 or 36,000,000 of the population, and to urge how easily a sum might be raised from them, not greater than they now pay for their imperfect village watchmen, which, in the hands of a skilful organiser, might be made to provide for the establishment in each zillah of a well-paid, dressed, and disciplined force, inferior in numbers to the present rural police, but far superior in trustworthiness and efficiency. To some such plan as this

* There are lower numbers in Beerbhoom and Bancoorah. But this arises from the Ghâtwâls having been admitted into the lists, who are not village chowkeydars, but guards of jungle-passes.

† The usual loose estimate of the population of the Regulation Districts, subject to the Government of Bengal, has been thirty-six millions.

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this I have myself leaned in earlier days; nor do I doubt either that, if it were practicable, it would provide a vastly improved rural police, or that we may fairly look forwards to such an improvement hereafter, though as yet at a great distance. I am satisfied, however, that to press for such a measure now would be impolitic and unwise, and that we might lose all in our anxiety to attain a desirable end sooner than can be reasonably expected. We must do our utmost to carry the people with us in our police reforms; at present they will readily admit old-established obligations to maintain village watchmen in a certain customary proportion to the size of each village, and to pay them after a certain usage, which differs somewhat in different villages, but has long been accommodated to old habits and customs in all. They will not, however, regard with favour a distinct and precise taxation for a new police, the application of which they will doubt, and the object of which they will be very likely to misunderstand: and, unfortunately, our knowledge of the people, and our intercourse with them, through distantly-placed, often inexperienced, and but too frequently changed mofussil magistrates, is not sufficiently intimate and cordial to allow as yet of our acquiring their confidence, and thereby their co-operation, in plans for the improvement of their old institution. Hereafter, when we shall have placed trustworthy magistrates in adequate numbers, and in the centre of manageable jurisdictions, I do not doubt that we shall be able gradually to influence the people more effectually than we can now pretend to do, and so to carry them with us as to obtain their intelligent assent, and with it their hearty assistance, to all our measures. We must, in short, obtain their confidence in our magistracy and police system before we can hope for their co-operation, and this cannot be expected under our present imperfect organisation.

Better-paid Police.

41. With regard to the second of the measures above enumerated, viz., the adequate payment of the stipendiary police, I have already submitted a proposition to the Government of India, by which, at an expense of 3,38,609 rupees, a reasonable increase may be made to the salaries and expectations of the mohurirs, jemadars, and burkundauzes, so as to render their situations more valuable than at present, and leave them, at all events, without the plausible excuse for corruption which they may now plead.* In order, however, to complete this part of the subject, I would very strongly recommend that a few considerable prizes be held out to darogahs, in the shape of increased salaries for particularly distinguished service. It is not always, and not, in fact, often the case, that a good police darogah is fitted to make a good deputy magistrate. Occasionally this method of rewarding distinguished service by a police darogah may be resorted to with success. But I have seen several very remarkable instances of failure, and, on the whole, I am much disposed to think that this method of promotion cannot be relied upon as generally practicable. It will be better, therefore, to grant a few enhanced salaries of 150 and 200 rupees to meritorious darogahs; and this may be done without any great increase of expense. There are now 50 darogahs on 100 rupees per mensem, 100 on 75 rupees, the remainder on 50 rupees. I would propose that, for special services rendered, it should be competent to the Government to reward as many as 15 or 20 distinguished darogahs by promotion to salaries of 150 rupees each, and 10 more for a like cause to 200 rupees each per mensem. These special promotions might be accompanied by other marks of distinction, so as to render the example in each case more striking and effective. The additional cost of this would not be more than 42,000 rupees per annum.

42. I may mention, while on this part of the subject, that I have found in some parts of the country some of the thannah jurisdictions of a very disproportionate size. This I believe to be more particularly the case in some of the Behar zillahs. It will be necessary in such cases to make an increase in the number of thannahs. But this, I think, will involve no expense worth mentioning, in discussing a matter of this magnitude.

* It has been my object in all my propositions to study a fair economy. I am sensible that the amount of increase I have proposed for the burkundauzes may, by some, be thought below the mark, and that a larger amount might have been suggested. I think, that what I have proposed will be a great improvement; and I should wish it tried before the amount is increased.

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More experienced Magistrates.

43. The third measure on my list relates to the youth and inexperience of the covenanted magistrates. This is a very serious evil; and it is absolutely necessary to remedy it. It arises out of the numerical inadequacy of the covenanted service to supply the number of officers required by the existing system. It has been a matter of reproach to the service for many years; but it has very much increased of late, owing to the growing disproportion of men to offices. It has, in a manner painfully perceptible to me in my visits to the different districts, impaired the force, dignity, and efficiency of our administration in the interior; and in all cases in which the youth and inexperience of the officer is not, as it sometimes is, counterbalanced by unusual ability and force of character, it has brought the all-important authority of the zillah magistracy into marked slight and disregard, and sometimes into actual contempt. It is certain still more to increase under the present system; and no addition to the number of the service can remedy it for many years to come. The method in which each zillah was manned from 1793 down to 1830 was thus:—there was in each an officer styled judge and magistrate, who was zillah judge in civil causes, and also magistrate of police. He was usually an officer of upwards of 12 years' standing. There was a collector who, under the old system, had very little to do, and was usually upwards of 10 years' standing, There was a register, who had generally arrived at from two or three to five or six years' standing, and there might be an assistant of any standing below that of the register, Under this system the magistrate was the officer most experienced, and highest in rank in the district; and he was, therefore, looked up to with a degree of respect, the recollection of which to those who, like myself, have known "the mofussil" in those old days, suggests a painful contrast with the uninfluential and comparatively insignificant and unregarded position of the juvenile functionaries, many of whom I have found ineffectually presiding over the zillah magistracies in my recent tours. But the magistrate of those days was encumbered by the weight of duty imposed upon him as the (to use the native phrase) "incarnation of justice," civil and criminal, over an unmanageable extent of country; and, partly with a view to remedy this, Lord William Bentinck's Government took the office of zillah magistrate from the judge, and gave it to the collector, turning the register, who had been a subordinate to the civil judge, into a subordinate to the collector-magistrate. Thus the zillah magistrate, though no longer the officer of highest standing in the zillah, was yet of sufficient standing, position, and experience to command respect, especially as at the same time the Government began to exercise a much greater degree of care than formerly in the selection of officers for collectorships. It happened, however, that about the same period an extraordinary activity was infused into the revenue administration in the Lower Provinces, which had been previously much neglected; and for some years after the offices of collector and magistrate had been united, the chief attention of the Government was given to remedying the grave neglects and deficiencies which had pervaded the revenue management of former times; so that the business of a collector became for a considerable time very engrossing and onerous, and the duties of the magistracy were comparatively disregarded. This, which experience has since shown to have been merely a temporary difficulty, was treated subsequently to 1838, and, in consequence of the report of the police committee of that year, as if it had been permanent; and the offices of collector and magistrate were separated, and put into different hands. But the number of the civil service employed in the Lower Provinces not being increased, but rather, I think, diminished, the inevitable consequence was, that the lower paid of these two offices, that of the magistrate, fell into the hands of functionaries who had previously been the subordinates of the collector-magistrate; and young officers became thenceforth magistrates at about the same standing at which they had formerly become registers, or (subsequently) deputy collectors and joint magistrates. At present the reasons which caused this change no longer exist. The nature of the duties and responsibilities of collectors' offices requires that they should be held by officers of a certain standing and experience; but the actual work of those offices has become, with a few exceptions, so notoriously light, that full leisure is left for the efficient performance of a magistrate's business; and there is undoubtedly nothing in the nature of the two duties in these provinces, where the collection of the Government revenue is almost mechanical, and the

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interference of the collector in the realisation of the zemindar's rent fro i his tenants is purely judicial, to make them in the smallest degree incompatible. To reunite them, therefore, is now the mere dictate of prudence. It will at once place the superintending magistracy of each district in experienced hands, will economise labour, will remove a standing reproach against the Government, and will restore to the mofussil administration that strength and weight which the present youth and inexperience of our "boy-magistrates" have very sensibly and seriously impaired. This measure was proposed by Lord Dalhousie in 1854; and the reasons in its favour which then existed have been greatly enhanced by the occurrences of the past two years. I earnestly trust that the advantages which it offers, and which are enjoyed by all other parts of India, including all our recent acquisitions, will no longer be denied to Bengal, where, in fact, they are most urgently needed, and where the theoretical objections to the system, weak as I believe them to be everywhere else, have literally no kind of practical application.

By those who object to this, in my judgment, most useful and necessary measure, two methods have been proposed of remedying the great present evil, which nobody denies, of the youth and inexperience of the magistrates. One is to make the magistrates and collectors, as it were, change places; to let the young and inexperienced officers become, after their present brief training, collectors, on the present salaries of magistrates, and to let them thence rise to the office of magistrate, receiving in that office the salary now given to collectors.

This would merely transfer a disease from one part of the administration to another part, and cure the defect in the magistracy at the expense of the efficiency of the revenue department. The revenue department, not less than the magistracy, requires maturity of standing and experience; and the Government as well as the people would suffer if the office of collector were placed generally in young, inexpert, and unpractised hands.

44. Another plan is to keep the two offices separate, and to divide the aggregate salary of a magistrate and a collector equally between each office, so as to make the standing of a magistrate equal to that of a collector; bearing in mind that this is to be done with a limited service which, for many years to come, cannot possibly receive an increase of experienced officers, it will be obvious that this would not prevent as large a proportion as at present of officers in independent charge (whether magistrates or collectors) from being too young for the duties of their position. At present a young assistant becomes first a dependent and subordinate "joint magistrate and deputy collector," and next a magistrate of a zillah. And if there are a certain number of magistracies vacant, the junior officers must be taken to fill them whether they be experienced or inexperienced, two years out of college, or five or ten. This evil will not be cured by taking from the salary of a collector and adding to the salary of a magistrate; on the contrary, it will be in some degree increased. What is required is, that the office of magistrate shall be moved up higher in the scale, so as to be, as it were, out of the reach of the inexperienced junior until he shall have passed through further stages of probation. And this can only be done (the numbers of the service being inadequate as well as limited), by joining the magistracy to some existing higher office, such as the collectorship, and letting the young officer continue in the subordinate, though gradually improved and improving position, until time and experience shall have fitted him for an independent charge. Nor can it ever be too strongly insisted upon, that the nature of a collector's duties in this part of India is such as to offer no reasonable objection to the junction, but rather in many important respects to render it politic and advantageous.

45. If this were done, the step to which the junior now rises from his first and insufficient training, instead of being, as now, that of a magistrate in full charge of a district as large as three counties, would be, with perhaps the same or nearly the same pecuniary advantages, the more suitable position of a deputy or subordinate to the experienced collector-magistrate, and the zillah magistracies, instead of being in the hands of youngsters of three, and perhaps even less than three years' standing, would not be attained to under a standing of at least ten years, and probably much more.*

* Our present junior collector is of eleven years' standing, and this is at a time of unusually rapid promotion.

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Increase of Deputy Magistrates.

46. The next necessary measure is an increase to the magistracy, and this can only be by an increase to the number of uncovenanted deputy magistrates.

47. It is vain to talk of police reform so long as the police are under no closer superintendence than that of a magistrate from 30 to 60 miles off (or even more), in a country where, owing to the nature of the climate and the want of means of communication, a distance of 10 miles is often more than equivalent to 50 miles in England. I will not here parade any statistical facts. Every one acquainted with the country knows how few and far between are our magistrates in the interior as compared with even the worst-organised country in Europe, and every one admits that one of the first steps towards improvement must be to have magistrates at such tolerably convenient distances that each functionary shall not be, at all events, more than a few hours' journey from the most distant village in his jurisdiction. I think that the proper size of a deputy magistrate's jurisdiction was not unreasonably stated by an intelligent and experienced native friend, whom I consulted on the subject, as "so much as the magistrate could go to one end of in his morning ride, and the other end in his evening ride." This would probably comprise two, or at most, three thannahs. The total number of thannahs is 484. But of these some belong to the Sonthal Pergunnahs, and a good many are city thannahs, such as the 15 thannahs of the city of Moorshedabad. These may be for our present purpose deducted, as well as the sudder or station thannah of each district, which should be under the immediate direction of the zillah or district magistrate. After these deductions, there will be left about 400 thannahs. If a deputy magistrate were appointed to every three of these thannahs, we should require 133 deputy or assistant magistrates. Bnt we have already, between covenanted assistants and uncovenanted deputy magistrates, 33 out-stations or subdivisions established, so that the new appointments actually required would be 100, a number which would hereafter be liable to some diminution, as the lower ranks of the covenanted service were increased. Taking the number at 100, and placing this number on salaries of from 200 to 700 rupees, in the proportion now assigned to the uncovenanted executive service, the expense of this additional establishment would be 4,21,200 rupees in salaries. For a reason, however, to be hereafter stated, I am clearly of opinion that the maximum at present assigned to the uncovenanted executive service is too low. Instead of the highest class embracing only one officer on 700 rupees, the highest class should embrace two officers on 1,000 rupees each; below that should be a class of four on 800 rupees each, and then (omitting the present class of 700 rupees) the classes should proceed downwards in the same proportions as at present. This would raise the additional charge above quoted to 4,60,801 rupees. The additional establishments, allowing for some reduction in the present zillah magistrates' establishment, would certainly bring the expense up to five lacs and a half per annum, or say, with some additional thannahs, six lacs. For this amount, however, I think this very desirable, not to say necessary, reform might be made. And even then, and after adding the amount of 3,38,609 rupees required to render adequate the pay of mohurirs, jemadars, and burkundauzes,* which would raise the total additional annual expense to 8,88,609 rupees, or say, after allowing for all defects of the estimate, ten lacs of rupees, the police charges of Bengal would still be only a little more than the police charges of the North-western Provinces.† And it must be by no means left out of sight, that the diminution of expenditure at present, in consequence of the diminished number of junior civil servants, as compared with the year 1850, is more than a lac and a half of rupees;‡ and as it is in a great measure owing to this diminution that an addition is required to the uncovenanted magistrates, it is reasonable to set off a large part of this lac and a half, say at least a lac, against the additional charge now asked for, thus reducing the total to a maximum of nine lacs per annum.

48. My

* *See* para. 4 of this Minute.

† Provincial Police charges, 1851–52 :—

Bengal	10,31,386.
N. W. P.	16,97,607.

‡ *See* para. 15 of Mr. Secretary Grey's letter to the Government of India, No. 2137, of 30th September 1855. The actual difference is 1,54,440 rupees.

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48. My reason for thinking it necessary to have a class on 800 rupees, and a class on 1,000 rupees per mensem, is that, although I should contemplate filling the new offices chiefly with natives, it would be indispensably necessary to have a certain number of well-educated and respectable Englishmen among them; and experience as well as theory has shown that these cannot be had for the same pecuniary inducements as natives of the country, but must be in general paid more highly. In districts where there are many indigo planters, it is absolutely indispensable to have English magistrates; and to attempt to administer the magistracy with natives in such districts will always be productive of dissatisfaction and disappointment.

Junction of Judicial and Executive Powers.

49. There is, however, an opinion which has found favour with some persons of just weight and authority in matters of this kind, and which has indeed a certain plausibility which tends to recommend it to many, and especially to those whose experience or whose mode of thinking has been derived from European rather than from Oriental habits, against which I am especially desirous of raising my testimony in this place, the rather, perhaps, that, in the days of my smaller experience, I myself have held and advocated the opinion, which I now very heartily condemn. The opinion to which I allude is this,—that magistrates of every degree should be debarred from all judicial powers, and should have nothing but the executive duty of preventing and detecting offences, and that separate judicial functionaries should always receive and try cases of every kind committed to them by the magistrates of various degrees. Thus it is, I believe, contemplated by some advocates of this system, that, at or near every place at which a deputy magistrate is stationed, there should be a moonsiff, or a Sudder ameen, or a judicial officer of some corresponding class, to try all cases sent to him by the deputy magistrate; and that, in the same way, all cases coming before the zillah magistrate, whatever their nature and importance, should be sent for trial to a judicial officer at the zillah station, native or European.

50. It is one very serious objection to this scheme that it will be very expensive, not unlikely, as I believe, to double the proposed additional charge. But I think this the smallest objection to which it is liable. It is a scheme foreign and unintelligible to Asiatic notions, and altogether founded on European ideas and habits, going, indeed, in its excessive provisions to a degree even beyond any general European practice.

51. I am very sure that our mofussil administration will, *cæteris paribus*, be generally efficient, while it is certain to be also acceptable to the people according to the degree in which it conforms to the simple or Oriental, in preference to the complex or European model. The European idea of provincial government is by a minute division of functions and offices, and this is the system which we have introduced into our older territories. The Oriental idea is to unite all powers into one centre. The European may be able to comprehend and appreciate how and why he should go to one functionary for justice of one kind and to another for justice of another kind. The Asiatic is confused and aggrieved by hearing that this tribunal can only redress a particular sort of injury, but that, if his complaint be of another nature, he must go to another authority, and to a third or a fourth kind of judicature, if his case be, in a manner incomprehensible to himself, distinguishable into some other kinds of wrong or injury. He is unable to understand why there should be more than one hakim, and why the hakim to whom he goes, according to his own expression, as to a father for justice, should be incapable of rendering him justice, whatever be the nature of his grievance, or whatever be the position of his adversary.

52. Accordingly, not only in all our recent acquisitions, such as Scinde, the Punjaub, Burmah, Nagpore, Oude, but in most of those which date thirty and forty years further back, such as the Nerbuddah territories, Assam, or Arracan, we have carefully framed our administration upon the Oriental plan, modifying it only where absolutely necessary to insure real benefit to the people. And while the Europeanised methods of our oldest territories have been notoriously unsuccessful, the result has, on the whole, been so decidedly favourable in the newer districts, that no sound Indian statesman would now dream of proposing for any new acquisition any other plan of administration. Now nothing can be

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more opposed to the Oriental plan of administration than the entire separation of judicial from executive duties, which is advocated by the over-much Occidentalists to whom I have alluded, at the same time that it is going backwards from the course which experience has been gradually forcing upon our older territories ever since 1793. In that year the "regulation system" began by denuding zillah magistrates of almost all judicial powers. But this was soon found to be practically intolerable, and first in 1807, and afterwards at different intervals, the judicial powers of zillah magistrates were increased from the infliction of one month's imprisonment to that of six months, one year, two years, and ultimately three years, which is the limit of judicial power now exercised by zillah magistrates. I know that the general opinion of the most trustworthy officers is, that if the magistrates were not so young, that is, if by union of the office with that of the collector, or in any other way, the age and experience of the magistrates were raised to its former standard, it would be wise to increase (instead of diminishing) their judicial powers, and to give them, as is given to magistrates in several of the "Non-regulation" Provinces, a power of sentencing to imprisonment for as many as seven years, subject only to the revision of a higher authority. This was recommended by Mr. Dampier, in his Police Report for 1848, for all cases of simple dacoity.

53. Before 1830, the trial of heinous cases in each zillah was by a circuit judge, who came at stated intervals, tried such cases as he found ready, and departed, to be succeeded on the next circuit by a different, and again, at another interval, by a third, and sometimes even a fourth, circuit judge. Among some evils peculiar to the system as it then existed, there was undoubtedly much that operated with advantage in these successive circuits by successive judges. That system has been succeeded by one in which each zillah station has its permanent sessions judge. And though this change effected an undoubted remedy for some of the more obvious evils of the previous system, it has been found in practice to be open to certain special objections, such as have been thought by many almost to counterbalance its admitted benefits; for, instead of the little known, and therefore the more honoured, circuit judge, we have now a judge who, in a small station and a confined society, must of necessity be in such a degree of close and incessant intercourse with the magistrate as usually breeds the familiarity which is proverbially destructive of respect. Small societies, too, are liable to jealousies, scandals, quarrels, over-friendships, over-enmities; and in all these, to the detriment of his official usefulness and his judicial dignity, the judge is not seldom found to bear a part. Sometimes the judge and the magistrate are in open enmity; and then every counter-decision is apt to be attributed, by their keen-sighted native observers, to the existence of ill-feeling between the two functionaries. As often, perhaps, the judge and the magistrate are in close intimacy;—they dine together, they ride together, they shoot or hunt together, their tastes and feelings are obviously in unison; and then every judicial affirmation of commitments and appeals is liable, by narrow-minded and interested by-standers, to be put to the account of friendship and influence. In one zillah the judge perhaps is weak, and exercises feebly and ineffectually the control over the magistrate which the system expects of him. In another zillah the judge may be vigorous, encroaching, overbearing, and then the magistrate is made a cypher, and his power, without his responsibility, passes into hands for which it was never intended. No one who is familiar with the state of the interior will deny that, amidst much that is good, our present system is often marred by one or other or all of the evils I have above depicted; and these evils, wherever they occur, arise undoubtedly from the antagonism of a locally-opposed judicial and executive authority. But conceive this local antagonism not merely at each zillah station, but all over every district, and the antagonism in each case, not of two liberally-educated Englishmen, but of two half-educated and Orientally-civilised natives, and let those who know the country and people declare what would be the practical result. Conceive every darogah opposed perhaps to an antagonist local moonsiff, and every native deputy magistrate to a native Sudder ameen at an out-station; imagine the bickerings, the criminations and recriminations that would ensue. For, though under the greatest provocation, corruption is the last thing which a native ever imputes to an English judge or magistrate, it is the first imputation which a native casts on a native, on great provocation, slight provocation, or no provocation at all. Thus, in but too many instances, would executive

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officers account for every failure by insinuations against the judicial department, and thus as often would the judicial functionaries retort by insinuations against the purity of the executive. At the best, all the difficulties and embarrassments which even now not unfrequently impede the administration, owing to divided authority at the chief zillah stations, would be multiplied a hundredfold. If it were asked why crime had increased in a given district, the executive officers would reply, "Because of the pertinaciously unreasonable acquittal of all our criminals by the judicial functionaries." If the judicial functionaries were in any way questioned for this result, they would answer, "It is because of the negligence and inefficiency of the executive." Nobody would be responsible. Power would be everywhere divided, and everywhere contending against power. The administration of the interior would be torn in sunder, and the result would be good made bad, bad made worse, and confusion everywhere worse confounded. No one, who has the personal acquaintance with the interior which my present position no less than my past experience has given me, can say that this anticipation is exaggerated. All must agree that the mischiefs I have anticipated would, under such a system, be very likely to break out.

54. I believe, too, that to deprive our magistrates of judicial power, while it would degrade them in the eyes of the native community, who can never understand why, when the hakim has caught a thief, he should not forthwith try and punish him, would take away a great cause of self-respect from the executive functionary and a great means of self-improvement. I have no doubt that the sense of judicial responsibility has a very large and important effect in raising the character and improving the conscientiousness of our executive magistrates, while it certainly adds greatly to their useful influence among the people; and I am satisfied that justice is not likely to be less truly or satisfactorily administered under the present system, which entrusts large judicial powers to magistrates and deputy magistrates, than under a system which, taking away from them all judicial power, should make them in their own view, and in the apprehension of the people among whom they act, nothing but a higher kind of police darogahs.

55. In recommending, therefore, a considerable addition to the number of deputy magistrates, I would be understood to advocate very strongly that they should, as at present, be permitted to exercise judicial powers varying with their known qualifications and experience, and subject to revision by a higher authority. This is in perfect accordance with recommendations of the recent Report of the Law Commissioners.*

Improved Administration of Justice.

56. The fifth and last general measure which I have enumerated is an improvement in our criminal courts of justice.

57. This part of the subject has repeatedly been brought to notice in Mr. Dampier's annual reports, and there is undoubtedly a general consent of opinion as to the urgent necessity for an improvement.

58. But, as might be expected on a subject so difficult, there is much variety of opinion as to the manner in which improvement can best be effected.

59. On the whole, and after much careful consideration, I give in my entire adhesion to the recommendations of the London Law Commissioners, as stated in their recent Report, but with certain modifications, the most material of which I shall now proceed to describe.

Jury Trial.

60. The plan of the London Law Commissioners provides† for trial of heinous cases by the sessions judge in each zillah, assisted by a jury in cases where certain privileged persons are defendants, or among the defendants.

61. The privileged persons are thus stated in the Report:—"A British subject,

* See pp. 98 and 99 of the Report.

† Chap. xix., p. 149.

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subject, or an European, or an American, or an East Indian, or an Armenian, or a person of any other class to which the Governor-General in Council may see fit to extend this rule, registered according to such rules as the Governor-General in Council shall prescribe." Unanimity, or a majority of not less than two-thirds, with the concurrence of the judge, being necessary for a verdict of guilty. Of all other defendants the trial is to be before the sessions judge and two or more assessors; the decision being vested exclusively in the judge. I will enter in this place into no argument, but simply state that I disapprove of these provisions; and, instead of confining trial by jury to certain privileged classes, I would have all trials of heinous cases in the Mofussil before the sessions judge and a jury.

System of Appeal to High Court.

62. The plan of the London Law Commissioners leaves the system of appeal very much as it is now, encouraging appeal by ensuring every appellant against any disadvantage, and giving him every possible chance of advantage by appeal.* But in cases of trial by jury, the High Court is not permitted to reverse a verdict as to facts; though it may try any point of law in appeal from such trials, and alter, in the way of mitigation, but not in the way of enhancement, any sentence passed by a Sessions Court in such trials.

63. If then jury trial were made the rule instead of the exception, there would be, even according to the scheme of the Law Commissioners, no appeal whatever from the Sessions Court on the facts, but only on the law. To this I have no objection. There would remain an appeal in mitigation of sentence, and this I should not object to leave, not however binding the High Court to take up any such appeal unless on strong *primâ facie* ground, shown to their satisfaction, for questioning the justice of the sentence appealed against. But I would restore the wholesome power of enhancing within certain limits, as well as reducing sentences, which was formerly exercised by the Sudder Court. I can see no reason for withholding it, and a great many for giving it. Our zillah judges err at least as often by over-leniency as over-severity; and over-severity has never been imputed to the Sudder Court, but on the contrary.

Powers of Sessions Judges.

64. The plan of the Law Commissioners gives to the Sessions Courts the power of sentencing to any legal punishment short of death. Capital cases are to be referred to the High Courts.†

65. This entirely accords with my view of what is required. But the large powers of revision given to the High Court by Chapter xxv. are, in my judgment, for the most part unnecessary, and I would either abrogate or greatly reduce them. In this country it is quite sufficient to give a power of revision on appeal, without encouraging the High Court to take up cases regarding which no one has appealed or complained. This is one of those excesses of cautious investigation which so frequently disfigure our system, and by occupying time which might be better employed, as well as by adding to the uncertainty of sentences, do in the long run a great deal more harm than good.

Moonsiff Magistrates.

66. The plan of the Law Commissioners gives to subordinate magistrates much the same powers as at present, but it makes every moonsiff a subordinate magistrate. The present system leaves the Government the option of making a moonsiff a subordinate magistrate or not; and I think the present system in this respect very much the most prudent and proper.

Appeal to Sessions Judges.

67. The plan of the Law Commissioners gives an appeal of right against every sentence

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* Chap. xxvi., p. 163.
† Page 96, and see note at p. 98; also Chap. xxii., Rule 304, p. 157.

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sentence or order, light or heavy, of every magistrate and subordinate magistrate, high or low, to the sessions judge. This is simply impossible, if the subordinate magistrates are increased as I propose to increase them. Even now, the appeals from magistrates and subordinates with the higher powers, go far to swamp the sessions (who are also civil) judges. And if, as I propose, the magistrates are doubled, it is vain to think that the present number of sessions judges can hear their appeals. And besides this there is good reason for leaving all the subordinate magistrates subject in all things to their chief zillah magistrate. It has always been a mistake to transfer them in any way to any other authority; every purpose for which the new arrangement is proposed, will be far better subserved if the deputy or subordinate magistrates were, as to their judicial not less than their executive functions, made liable to the complete authority of the zillah magistrate by whom they are to be posted, and guided, and controlled: by whom they are to be checked in their errors and encouraged in their successes; to whom they are to look for praise or blame, for repression or advancement; and to whom the Government must look for advice and opinions as to the conduct and qualifications of every member of the new organisation.

Effect of Act XXXI. of 1841.

68. But, both in regard to the revision of sentences of his subordinates by the zillah magistrate, and the revision of the sentences of the magistrate by the zillah or circuit judge, I would most earnestly counsel a return to the system in force before 1841, which gave no criminal appeal of right in any case, but allowed certain higher authorities a power of discretion, and on sufficient cause shown, of revising and amending sentences of certain subordinate courts.

69. The old system was by the Honourable Court* well and wisely contrasted and compared with the newer system of 1841, and the practical superiority of the former strongly and convincingly insisted on. "We apprehend," says the Honourable Court, commenting on Act XXXI. of 1841, "that in this enactment the analogy of civil has been erroneously applied to criminal judicature. In the exercise of the right of appeal given to a party in a civil suit, he has to take into consideration the increased costs with which he will be chargeable in the probable event of the original decree being affirmed. But the convict will have no such motive to discourage him from exercising his right to appeal. The execution of the sentence must be suspended, which will itself be a positive benefit, and the superior tribunal, when it confirms the sentence, cannot enhance its severity as a punishment for the exercise of a legal right. The Act in question indeed expressly prohibits such enhancement, so that a committed prisoner has no inducement to refrain from trying the chance of an appeal. It may, therefore, be expected that when that right comes to be fully understood and generally known, an appeal will be preferred against every sentence, and the great mass of the criminal business of the country will have to be done twice over."

70. "Under the former regulations, the Courts of Circuit, whose powers have since been transferred to the sessions judges, were authorised, upon petitions presented to them within a limited period, to call upon the magistrate for his proceedings in any case, and to pass such orders thereupon as they might deem proper and consistent with the regulations. Similar authority was also vested in the Court of Nizamut Adawlut over all inferior tribunals, and it is renewed in the Act now under consideration. This we apprehend to be the correct principle by which liability to error on the part of the subordinate tribunals should be guarded against; such an interposition of authority did not imply any right of appeal by a convicted prisoner, and was not open to the objections with which that right would be attended. The petition on which superior authority was interposed could only in a loose sense be regarded as at all partaking of the nature of an appeal."

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* Despatch from Honourable Court, No. 1 of 1843, dated 1st February.

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Sections XXIII. and XXIV., Regulation IX. of 1807.

71. And in a later despatch, dated 3 April 1854, remarking on the reply of the Nizamut Adawlut to the foregoing observations, the Honourable Court's opinion is thus repeated :—" We are aware that it was competent to the superior tribunals, upon petitions presented to them, to call for proceedings in criminal trials, and to pass such orders upon them as might seem just and proper. This exercise of authority, as we observed in the despatch above referred to, constitutes the correct principle by which liability to error on the part of the subordinate tribunals should be guarded against; but the petition on which it may be interposed, can only in a loose sense, as we also observed, be regarded as at all partaking of the nature of an appeal. In such a sense only we conceive the term appeal to have been used in the section pointed out by the Nizamut Adawlut. Otherwise it would imply that the right of appeal belongs to the prosecutor as well as to the prisoner, and it would require that the execution of every sentence should be deferred until the period after which the right ceases had expired, and that every case appealed should undergo complete investigation by the appellate jurisdiction, although, *primâ facie*, there might be no ground whatever to doubt the justice and propriety of the original decision."

72. " The statement furnished by the Nizamut Adawlut shows that the number of cases disposed of in 1843, in the Lower Provinces, amounted to 31,751, and the number of cases appealed to 5,212, or a sixth part of the whole. This is a large proportion of the criminal business of our system of judicature which has had to be done twice over; and it can hardly be doubted that the proportion would greatly increase, if it came to be fully understood, and generally known, that every appeal must be received as a matter of right, and must be completely investigated before the original sentence could be carried into execution.

73. " We therefore continue to think that in passing Act XXXI. of 1841, the analogy of civil has been erroneously applied to criminal judicature, and that the provisions of that Act require to be reconsidered and revised."

74. It is much to be wished that the sound advice of the Honourable Court should now be followed; for, unless this be done, such is the fondness for appeal in this country, that every addition to courts of first instance must be accompanied inevitably by a proportionate addition to courts of appeal.

Nomination of Jurors.

75. Under the plan of the Law Commissioners, the High Court is to make rules for the qualification, appointment, and other matters relating to jurors.* I am clear that the High Court had better be kept from this and all other executive business. A better system was, I think, proposed in the Draught Jury Bill, prepared by the late Mr. Bethune in 1849, and published in the " Gazette" of the 31st October 1849. By this the executive officers of Government, the collector, controlled by the Commissioner and by the Government itself, was to frame the jury lists. However this may be done, I should desire to see as much honour and dignity as possible attached to the rank of a juryman. Perhaps it may not be possible here, any more than in England, to make the duty attractive. But something may be done to surround it with honour, and to make, as it were, some amends for the trouble and responsibility it must occasion.

Nomenclature.

76. Perhaps names are not much worth debating about; but, referring to the nomenclature of the Law Commissioners, I confess to a prejudice in favour of deputy-magistrate and assistant-magistrate, as compared with the long, and in the

* Chap. xix., section 267.

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the mouths of the natives, unmeaning and unintelligible appellations of judge of a subordinate criminal court of the first class, and judge of a subordinate criminal court of the second class.

77. It is impossible to imagine that anybody will ever use all these words in the hurry of business, and the process of abbreviation may possibly be somewhat arbitrary and uncertain. Besides, I have an old-fashioned objection to calling a magistrate a judge, and this, I fancy, will be shared by the natives, who have long been accustomed to associate distinct meanings with the terms judge and magistrate. If possible, then, I would put in a plea for the old terminology.

78. I make no remark in this place on the proposed constitution of the "High Court" of the Law Commissioners, nor on any other part of their plan that does not immediately bear on the administration of criminal justice, and thus on the improvement of the police.

Roads.

79. I have now recapitulated the five chief improvements which seem to me to be required to place the police of Bengal on a footing of reasonable promise, from which it may gradually advance to a better and still better condition. There is, however, yet another measure, which can hardly be omitted in this place, and which may seem of itself almost as important as any of the foregoing. I allude to a measure for the establishment of sufficient means of communication with the interior of districts. It cannot, indeed, be necessary to dwell on the importance of roads and communications to the well-doing of any police system. No system can work well while our police stations and our large towns and marts in the interior are cut off from the chief zillah stations, and from one another, by the almost entire absence of roads or even (during a large part of the year) of the smallest bridle-roads or footpaths. It may be impossible, in the present state of our resources, to make all over our zillahs such roads as are fit at all times for wheeled carriages, but, where better and broader roads cannot be made, it ought to be an indispensable part of our system to have from the chief zillah station to all police stations in the interior, and from each police station to the neighbouring stations, at least a raised and bridged foot or bridle-path, so that a man, a horse, a bullock, an elephant, or a palankeen, should at all times of the year be able uninterruptedly to pass and re-pass. There are but few of our zillahs where this might not be done at a comparatively small expense if the land were available; and of so much public import is it to have land available for such a purpose, that I should not think it unjust to propose a law making it binding on all zemindars, and other proprietors of land, to give up sufficient lands for the purpose, free of all cost to the State, except of any standing crops or agricultural produce. In most parts of Bengal the zemindars would do this willingly without any law, and the benefit to the surrounding lands would be of itself sufficient to over-pay the value of the land given.

80. By so digging the earth for the road as to form a small canal, a means of water communication in the rains might be secured, which would be of the highest value to agriculture and commerce, and which would easily bear a light toll, sufficient to pay for the repair (at least) of the road and the canal.

81. I think that the construction and repair of such roads ought to be an essential duty of each magistrate and division magistrate, that the expense should be estimated and passed once a year, separate from all other public works, and should be considered and calculated on as one of the charges of the police. Such a system, fairly established and energetically kept up, would by facilitating the movements of magistrates, of police officers, of despatches of complainants and of witnesses, do as much for the improvement of the police as any measure that could be devised, and, without it, I doubt if any measures could be fully successful.

Omlah.

82. It is a matter not absolutely essential, yet surely of much importance in this and other branches of the public service, that means should be adopted for encouraging

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encouraging and rewarding good service among the native ministerial officers of our courts, popularly called the Omlah.

83. It is usual to run down this class of men with undistinguishing severity, and to attribute to their pernicious influence the greater part of the mischiefs which beset our courts and impede the administration of justice. To a large and unhappy extent these imputations are, it must be owned, but too well deserved. Yet even here reprobation has been too indiscriminate, and too little regard has been had to the trials and temptations by which this class of officers is assailed and surrounded, to the real services which they render, to the extraordinary knowledge of business, industry, and ability by which so many of them are distinguished, and to the general neglect with which they are treated by the Government they serve.

84. They are for the most part paid at a rate that almost necessitates corruption; they have at the best little to look forward to as the honourable reward of a life of incessant toil; and they are liable to be turned off, and not seldom are turned off, without warning, and with the most trifling compensation, on any sudden change or remodelling that may occur in the offices to which they are attached.

85. Yet in the tours which I make through these provinces I have found, much oftener than I anticipated, and in various parts of the country, old, faithful, and useful servants of this class, to whose long, zealous, and often strikingly honest and uncorrupt labours the most convincing testimony is borne by all persons, European and native, with whom they have come into contact.

86. On such men as these I am occasionally solicited to bestow some official promotion as a reward for their past service, and as an incentive to the diligence and honesty of others. To these solicitations I have never been unattentive, and I have done all that I could to encourage meritorious native functionaries of this class by promoting them as far as I was able. But our system seldom permits of this kind of reward being bestowed. The most honest and capable serishtadar cannot rise as a judge without passing through the grade of a moonsiff; and for this he must undergo an examination, which is always insuperably distasteful to a mature man of business, and which is intended to prove, in younger candidates for office, that aptitude and that knowledge of which the old serishtadar has notoriously been long possessed, and which he has proved by a quarter of a century of constant and approved transaction of affairs. For a deputy magistrate he may be fitted by knowledge and experience, but seldom by personal activity or past habits; and, indeed, as natives of a certain age are remarkable for the absence of that pliability and versatility which enables a man to change himself with his circumstances, it is seldom that any of the most able and experienced ministerial omlah, who have long distinguished themselves in subordinate positions, are found to succeed, if transferred to situations of a different and more independent character.

Civil Order of Merit.

87. I am satisfied, however, that it would be greatly to the interest and advantage of Government if some means were devised of systematically rewarding all marked and distinguished service on the part of these and other native civil servants of the State; and I have long wished to see a civil order of merit established for this purpose, with various grades or classes, and moderate pecuniary advantages varying with each class.

88. It would not be difficult to frame a scheme for this purpose, which should cost in money nothing worth consideration, but which might, and probably would, produce the most beneficial effect on the character and conduct of the whole body of native civil servants. I desire to submit this suggestion for the consideration of higher authority.

Station Guards.

89. It may not be indispensable to the improvement of the police, but it is a thing very much to be desired for the security of the public peace, that there should

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should be available at the head-quarters of each station a small but well-drilled and trustworthy guard, to be used in case of riot or of opposition to the ordinary police. The same guard might be available for treasury guards and escorts, and for guarding the jails, and other duties of a like kind; and it would often save much harassing duty to the regular troops. I have already proposed the raising of civil police corps for this purpose, of which the expense would be met in part by a reduction of the present very inefficient jail and treasury guards. The Supreme Government has sanctioned the raising of one such corps, to be employed chiefly in the Sonthal Pergunnahs, and, as regards the main proposition, a reference has been made to the Honourable Court.

Honorary Magistrates.

90. It has been recommended, and the recommendation has recently been much canvassed, that commissions as honorary magistrates should be issued to certain carefully-selected indigo planters and zemindars, so as to enlist the wealth and influence of the Mofussil in the administration of its affairs. In favour of this proposition it has been urged that the zemindars and planters do now avowedly, and with the entire consent and satisfaction of the rural population, administer in all small matters, just that simple, ready, and paternal justice among their ryots, which the ryots best understand and appreciate; and that the jurisdiction which is thus assumed and exercised without law, being in itself useful and acceptable to the people, ought rather to be exercised with the full countenance and support of the law; that whether the law give it or withhold this jurisdiction, nothing can prevent the natural effect of wealth, position, influence, and authority among a docile and subservient population; and that it would be wise to enlist in the service of law and order that power which is now sometimes used against the public peace, and is at best, as between authority and crime, too often neutral, if not indeed sometimes ranged on the side of criminals and against the law; that many irregularities now caused by the exercise of unlawful power would cease, if this power were clothed with legal dignity and responsibility; and that by raising the position we should raise and confirm the character and improve the conduct of the entire class in question. On the other hand it is replied that, as regards the zemindars, they are, with rare and hardly ascertained exceptions, hard, selfish, corrupt, and grasping, or indolent, facile, and indifferent to the public good, while they are almost always ignorant and prejudiced. And that as regards planters, they have but too often, under a system which undoubtedly involves a certain extent of forced cultivation, interests so opposed to those of their neighbours and dependants, as to make it in the highest degree unjust and dangerous to entrust them with legal powers, which the very best might sometimes be tempted, and the worst would always be ready, to use for the prosecution of their own unlawful objects. That although indigo planters are as a class greatly improved during the past twenty or thirty years, and often the willing and energetic instruments of much public and private benefit to the neighbourhoods in which they carry on their important avocations, yet they have not yet altogether got the better of a tendency to right themselves in cases of dispute, without waiting for tardy processes of law; and there is still too much jealousy between them and their native neighbours, and too many constantly recurring causes of quarrel between them, to render it possible to entrust to any of them powers which, however honestly they might and probably in many instances would be used, would nevertheless always be contemplated with doubt and suspicion by those around them, and could never be otherwise than unpopular in the hands of even the most esteemed and worthy.

91. Although I somewhat lean towards the opinion that a careful and judicious enlisting into the service of the public of the rich and powerful zemindars and planters of the interior has in it much that seems to promise well, and that it should at all events be kept in view as a measure to be at some, perhaps distantly, future time gradually accomplished, I am not yet in a position to recommend it for present adoption. I have, however, called on a number of experienced officers for their views on the subject, and I may hereafter be able to offer a more decided opinion regarding it.

Vernacular

Vernacular Education.

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92. Lastly, I would express my decided conviction that although the measures I have now proposed, improved and amended as they cannot fail to be during the further discussion to which they will be subjected, will in due time produce an improvement in the state of the Bengal police which cannot otherwise be effected, they are all of secondary importance, compared with the enlightenment of the people among whom they are to operate, and by whose co-operation alone they can be made fully effectual for the general good. While the mass of the people remain in their present state of ignorance and debasement, all laws and all systems must be comparatively useless and vain. Above all things that can be done by us for this people is their gradual intellectual and moral advancement, through the slow but certain means of a widely-spreading popular system of vernacular education, and money laid out on this great engine of improvement will, in the end, prove better spent and more enduringly profitable than on the working of the most excellent system of administration by the most efficient and costly establishments.

93. This greatest of our plans for the benefit of our Indian fellow-subjects has now under happy auspices been commenced. I earnestly trust that it may be prosecuted with persevering determination; that no reasonable expense will be spared to give it activity and extension, and that a large proportion of the rising generation may be embraced within its powerful and beneficent operation.

(signed) *F. J. Halliday.*

30 April 1856.

NOTE BY MR. SECRETARY GREY.

Note by Mr. Secretary Grey.
20 April 1856.

IT has for some years been matter of complaint by the public in the Mofussil, and more especially the English public, that the office of magistrate in Bengal is held by officers whose junior standing in the service and consequent inexperience do not qualify them for the exercise of the very responsible duties which devolve upon them.

For several years the propriety of re-uniting the offices of magistrate and collector has been thought of and discussed, one of the main objects of such reunion being to place the chief magisterial power in every district in the hands of men of mature age and long experience of India.

It has been thought by most people that such a measure could not fail to produce good, because, while on the one hand the same average amount of natural inferiority and natural superiority was likely to be found in an equal number of men selected from two different ranks in the service, it was on the other hand inevitable that the men of the one rank, that is those of the longer standing, would possess a far greater amount of official experience and of acquaintance with the country and its people.

It has not been supposed, having regard to the manner in which the land revenue in Bengal is raised, that any theoretical objection, founded upon European ideas, would be urged against the junction of revenue and magisterial authority in the same hands, and this seemed the less likely, from the circumstance that in eleven of the Bengal Regulation Districts and in all the Non-Regulation Districts such union of authority actually obtained; this being the case, too, it may be remarked, in all the districts where the permanent settlement does not prevail.

After being talked about for some years, the proposition to reunite the offices of magistrate and collector was at length formally made by Lord Dalhousie in April 1854. The proposition was submitted to the Government of India, and no notice of it being taken for some months, the Lieutenant-Governor, in October of the same year, called the attention of the Supreme Government to the subject, and solicited permission to take advantage of then expected vacancies to

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reunite the office of magistrate and collector in some four or five districts, which were named.

This request was, however, refused in January 1855, and a Minute of the Honourable Mr. Grant's was sent for the Lieutenant-Governor's perusal, in which Lord Dalhousie's proposition was strongly objected to. The Lieutenant-Governor communicated his views upon the question to the Supreme Government in February 1855, and since that date nothing more has been heard on the matter from the Supreme Government.

The subject has, however, intermediately been twice brought incidentally to the notice of the Supreme Government. In September last, the Lieutenant-Governor, in applying for an increase to the uncovenanted executive service, took occasion to observe that such assistance, though greatly needed, would not cure one great evil of the present condition of the service; namely, the evil of advancing very young officers to appointments of responsibility and importance.

This evil, it was remarked, could only be cured by one of three measures, one of which was the reuniting of the offices of magistrate and collector.

No reply to this communication has been received.

The second occasion on which the subject of placing the chief magisterial and chief revenue control in a district in the same hands was brought under the notice of the Supreme Government, was in the instance of the districts of Bhaugulpore and Beerbhoom, when a portion of the magisterial jurisdiction of each of those districts was taken, after the Sonthal insurrection, to form a Non-Regulation province. It was then recommended by the Lieutenant-Governor as a measure of economy, that the separate magistracies of Bhaugulpore and Beerbhoom should be abolished, and that the collectors of those districts should be made also magistrates; to this proposition the Supreme Government at once assented.

With the above exception, the magistrate-collector question has not apparently advanced since Lord Dalhousie made his proposition two years ago.

My object in bringing the subject now briefly to the notice of the Lieutenant-Governor, is to beg his attention to a comparative statement which I have prepared, showing the standing of the magistrates in Bengal, that is to say, of the officers actually officiating as such at three different periods, namely, in April 1850, April 1854 (the date of Lord Dalhousie's proposition), and April 1856.

This statement will be found, I think, to show an urgent need of some means being adopted to procure greater experience in the magistrate's office than is now obtained.

The average standing of the magistrates of the 25 * districts which have separate magistrates was, in 1850, nine years and eight months. The average standing of the officers now serving as magistrates in the same districts is only six years and ten months.

In 1850, there were only two magistrates below seven years' standing, now there are 15 such.

The youngest officer officiating as a magistrate in 1850 was of five years' standing; the youngest officer now officiating as a magistrate is of less than three years' standing.

In the case of 1850, I believe it was a temporary appointment merely, as the Directory shows several officers of one and two years' senior standing not acting as magistrates. In the present year, when Mr. Wigram was appointed to act as magistrate of Beerbhoom, there was at the time no officer between him and Lord Ulick Browne, the next junior acting-magistrate, who was qualified and available for a magistrate's appointment.

Unless the number of the service available for duty in Bengal is increased at least to the strength at which it stood in 1850, or some other remedy be adopted, it is clear that the present state of things will continue.

(signed) *W. Grey*,
20 April 1856. Secretary to the Government of Bengal.

* That is excluding the 24-Pergunnahs.

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	Magistrates' Length of Service in 1850.	Magistrates' Length of Service in 1854.	Magistrates' Length of Service in 1856.
Behar	17—1	11—4	5—6
Beerbhoom	17—1	6—11	2—9
Shahabad	15—10	5—11	11—0
Tirhoot	13—8	8—3	7—11
Mymensing	12—7	9—0	7—5
Jessore	12—4	8—10	6—3
Dacca	9—7	8—4	5—3
Sarun	9—4	9—4	6—3
Patna	9—3	8—5	5—6
Dinagepore	8—6	11—3	6—10
Monghyr	8—6	8—5	4—7
Hooghly	8—2	9—0	6—0
Midnapore	7—6	6—6	8—6
Rajshahye	7—6	8—5	6—4
Howrah	7—11	5—4	6—7
Purneah	7—3	7—7	9—7
Tipperah	7—4	11—4	9—6
Burdwan	7—3	7—6	5—6
Chittagong	7—3	10—4	6—10
Nuddeah	7—1	13—4	8—6
Backergunge	6—4	5—5	7—5
Moorshedabad	5—0	9—2	5—1
Sylhet	9—6	5—7	7—7
Bhaugulpore	10—3	8—9	10—3
Rungpore	10—8	6—11	5—0
25	242—9	211—2	171—11
	9—8	8—5	6—10

Note by Mr. Secretary Buckland.

Note by Mr. Secretary Buckland.
30 April 1856.

The accompanying statistical returns* are not at all satisfactory to my mind, but they are the best that can be compiled from the materials at present available, viz.: the annual reports of the late superintendent of police's office, and the annual figured returns of the Sudder Nizamut Adawlut; but it will be immediately observed that the returns of these two independent authorities neither tally the one with the other in those points where the figures might be expected to agree, nor does the one take up a subject at the point where the other left it off, or provide information as to the ultimate results. Nor are these returns themselves perfectly uniform for a term of 10 years. Headings have been altered, new definitions of crimes inserted, and for several years the returns of the whole Chittagong division do not appear in the superintendent of police's statements, an omission which occasioned me some perplexity at the sudden decrease of crime, until I ascertained the cause. At the present time, there is still greater difficulty in procuring statistical information. Since the commissioners of divisions became superintendents of police, there are only the annual returns for each division separately, and there is no compilation of a general return showing the results of a year's operations in the whole of Bengal collectively.

In the returns of the Sudder Court there is also an entire change in the form of tabular statements now submitted, a new set of forms having been forwarded by the Honourable Court of Directors, with directions to substitute them for those formerly in use.

It is very desirable that this want of uniformity should cease, and it appears to me that it would not be difficult so to remodel the multiform periodical statements, now submitted by the different authorities, as to make them more simple and easy for the compilers, and more practically useful for statistical purposes. I would merely observe that the Sudder Court has the power, by Regulation VII. of

* Marked (A.) to (F).

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of 1829, to prescribe the form of periodical returns to be furnished by the judicial or police officers under this presidency, but since the appointment of a superintendent of police, that officer has always determined the forms to be used for police returns.

I now turn to the several statements which have been compiled.

Statement (A) is taken from the reports of the superintendent of police, and exhibits the total number of offences ascertained by the police to have been committed in the Regulation Districts of the Lower Provinces from 1843 to 1852, the total number of persons arrested, convicted, committed, and acquitted.*

This return embraces every kind of criminal offence, heinous and petty.

The sudden increase observable in the entry of number of cases in 1845, viz., 1,17,001 against only 43,487 in 1844, arises from the fact that in 1844 only the number of cases into which inquiry was made by the police was exhibited; whereas from 1845 the total number of offences actually ascertained to have been committed, though they led to no subsequent inquiry, has been entered.

Again, from 1845 the number of persons committed to the sessions is not separately shown, but the result is included in the convictions and acquittals without any distinction. I point out these discrepancies because they derange all averages which it is attempted to draw from a mere addition of the figures presented.

I am unable to find any explanation for the sudden falling off in the number of crimes shown in 1850, in which year, even including the Chittagong returns, only 90,154 offences are given, whilst in 1849 they amounted to 1,41,895. There is, however, not a corresponding decrease in the number of persons arrested (though there is a decrease), viz., 91,742 in 1850 to 97,645 in 1849.

But the returns for 1851 and 1852 continue to exhibit a gradual decrease, which shows a general result unfavourable to any presumption of activity on the part of the police. The rough average proportion of convictions to acquittals is five to three, but I place no reliance on such an average, as this return includes petty offences, and also the punishments inflicted on police officers and chowkeydars by fines of small amount, for which the orders are passed merely on a darogah's report.

Statement (B) is also compiled from the reports of the superintendent of police, and exhibits the value of property stolen and recovered in each year from 1843 to 1852. It will be seen that the average value of stolen property reported amounts to 5½ lakhs per annum, but this is a return on which much dependence cannot be placed; as every one acquainted with the duties of a magistrate, must be aware how frequently losses are exaggerated on the one hand, and how frequently on the other hand losses are concealed; and often, when it is found impossible to conceal the outward signs of violence from burglary or dacoity, the owner of the house will stoutly deny the loss of any property, in order to avoid the further trouble of an investigation. There was a case at Serampore in Mr. L. S. Jackson's time, when the owner of a house in which a dacoity had been committed, on hearing that the magistrate was coming in person to investigate the crime, borrowed a quantity of brass vessels and ornaments from his neighbours, and tried by this device to support the story which he had told to the police, that the dacoits had carried off no property. But the magistrate observing that all the vessels, &c., bore marks of being in daily use, detected the scheme, and soon found all the broken chests and boxes of the house which had been carefully hidden away. In Baraset, a man who had been robbed of about 5,000 rupees in a peculiar iron safe, denied his loss on oath to the police at the time; and when, several years afterwards, the dacoity commissioner obtained a clue, which I think led to the recovery of the iron-safe and part of the money, the owner at once admitted his loss, and had a very narrow escape of being punished for the perjury which he had committed.

The average amount of property recovered is a little above 14 per cent.; but I observe that in the Chittagong division, in 1851, it came as high as 22 per cent.

Statement (C) is taken from the return of the superintendent of police. This return

* A statement, marked (D), has been compiled from the Sudder Court's returns, which shows the same particulars as this, but the figures differ throughout to the extent of two or three thousand in the totals of the number of persons arrested, and this difference pervades all the other columns.

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return only commenced in 1845, and its object is to illustrate the practical working of Regulation II. of 1832, which prohibits the police from inquiring into cases of simple theft or burglary, except on the complaint and at the request of the individual injured, or under the special orders of the magistrate. The object of the law was clearly to protect the people from the police, to save a person who had been robbed from incurring the further loss and trouble attendant on an investigation by the police. It is submitted that the existence of such a law is condemnatory of the character of the police, and it is further submitted that this law, benevolent in its intention to the public, is practically most benevolent to the thieves. It is impunity which encourages crime, and if no attempt is made to trace the offenders, they enjoy a practical impunity.

The statement shows that for 14 burglaries committed, only one burglar is punished, the chances being thus 13 to one in the burglar's favour. In thefts the proportion is rather higher against the thieves, viz. as eight to three; the general average being three convictions to eight offences.

But in numerous cases of theft the offender is caught on the spot, and moreover cases of theft are concealed or not reported, in many instances, where the property lost is of small value, or the owner has a doubt whether his property has been lost or stolen. It would be contrary to all experience to suppose that burglaries are really more numerous than thefts; but it is most difficult to conceal a burglary, the sindh, or hole in the wall or tatty, being easily discernible for many days, even after it has been repaired. It is further to be noticed in this return that the acquittals considerably exceed the convictions. Out of every seven thieves arrested by the police, rather less than three are convicted, and rather more than four are acquitted. Among the burglars the proportion is a little more than one conviction to two acquittals. Nor does this show the true proportion.

It is very well known that, in spite of all orders to the contrary, the returns of the police do not show the true number of persons arrested by them on suspicion and subsequently released. Some of them draw a fine distinction as to the point where an arrest is consummated, this consummation not taking place until the proof for the conviction of the individual is obtained. I believe it to be entirely an erroneous opinion to suppose that an efficient police can work well without laying hold of a much larger number of persons who will be acquitted than those who will be convicted. I once had a police return from Liverpool in my possession, which showed an honest out-turn of only one conviction to eight acquittals in cases of theft which had come before the police. It is no doubt most desirable to protect the public from being exposed to unnecessary interference and arrest by the police; but this can be more effectually done by requiring a strict account of every individual whom the police sent for, than by seeking to maintain an average proportion between convictions and acquittals which is deceptive and unnatural. This proportion of convictions and acquittals has long been held by the Sudder Court to be a test of official character, and has led to the most contradictory conclusions. But in the course of last year, when a case came before the Court, which showed that, in a particular district, the police had never made a mistake as to the parties whom they arrested, the system was exposed, and a circular order issued with a view to secure the correct return of all persons apprehended and released by the police.

The statement marked (D.) is compiled from the returns of the Sudder Court, and has been already referred to in connexion with Statement (A.)

Statement (E.) shows the operations of the Sessions Court from 1843 to 1852, and is compiled from the returns of the Sudder Court. It appears that there are rather more than 4,000 prisoners committed annually to the sessions, and the result of the sentences passed in those courts gives about three convictions to two acquittals. This number of acquittals is high, considering the long inquiries which have been gone through by the police and the magistrate previous to commitment. But it is this long inquiry which gives the accused greater facilities of escape, chiefly by tampering with the weary and not unwilling witnesses. However, if the number of trials referred to the Sudder be counted, as they fairly may be, as regards the Sessions Court itself, for convictions in the Sessions Court, the proportion of convictions to acquittals in the sessions becomes about two to one.

The actual figures of this statement show an average on the ten years of 1,935 convictions to 1,237 acquittals, with 512 prisoners referred to the Sudder Nizamut.

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The statement marked (F.) shows the result of the referred cases in the Sudder Court, and also of the appeals against the convictions of the sessions judges.

There is a discrepancy in the figures in these two statements (E.) and (F.), as to the total number of persons annually referred to the Sudder Nizamut. This is explained by the circumstance that the Statement (E.) includes only the persons sent up from the Sessions Court from 1st January to 31st December; but Statement (F.) includes only those cases received in the Sudder Court from 1st January to 31st December, so that the cases which have been referred by the sessions judges in the end of December, are taken into account in Statement (E.) for that year; but in Statement (F.) they only appear when they have arrived some time in January in the ensuing year. The average annual number of persons convicted in referred trials is 332 to 148 acquitted.

The result of the appeals against the orders passed by the sessions judges is only imperfectly shown in these returns; but from one of the figured returns (No. 2) prepared by Sir Robert Barlow, I find that from 1848 to 1852 inclusive, the number of petitions of appeal averaged 248, the sentences being modified or reversed in 85 cases, and upheld in 182 cases; as the average number of prisoners in each case appear to be about two and a half, the annual average of prisoners convicted at the sessions (amounting to 1,935) suffers a further reduction of 200 by the result of the appeal to the Sudder.

Of the total 4,000 persons annually committed to the sessions for heinous crimes, it thus appears that the conviction of 1,735 takes place in the sessions effectually, and 332 in the referred trials to the Sudder, so that of the whole number committed very nearly one-half is eventually acquitted.

The want of accuracy in the materials from which the present statements have been compiled, and the time that has been spent in fruitless endeavours to reconcile discrepancies, render an apology necessary for the meagreness of the conclusions which I have ventured to draw from them; but it seems to be very unsafe to build upon foundations so unstable, and which would probably be found on further inquiry to be still more untrustworthy than they appear.

(signed) *C. T. Buckland.*

30 April 1856.

(A.)

AN EPITOME of the TOTAL OFFENCES ascertained by the Police to have been Committed in the Lower Provinces from the Years 1843 to 1852 inclusive.

YEAR.	Number of Cases.	Number of Persons Arrested.	Number of Persons Convicted.	Number of Persons Committed.	Number of Persons Acquitted.	Number of Persons remaining for Trial at close of the Year.	REMARKS.
1843	44,774	86,543	40,280	4,409	34,611	4,950	1,090 died, transferred, or escaped.
1844	43,487	82,987	45,025	4,022	30,809	1,943	1,188 „ „ „
1845	1,17,001	86,623	50,235	- -	32,831	2,537	1,020 „ „ „
1846	1,19,932	87,302	52,240	- -	31,578	2,610	874 „ „ „
1847	1,29,708	89,789	53,454	- -	32,722	2,548	1,065 „ „ „
1848	1,34,200	93,975	56,618	- -	33,550	2,695	1,082 „ „ „
1849	1,41,895	97,645	59,246	- -	34,733	2,651	1,014 „ „ „
1850	90,154	92,342	54,683	- -	33,392	2,716	1,019 „ „ „
1851	90,743	90,483	52,053	- -	34,005	3,137	1,278 „ „ „
1852	87,788	87,549	53,351	- -	29,966	3,058	1,274 „ „ „
TOTAL -	9,99,682	8,95,238	5,17,215	- -	3,28,197	28,845	10,904
Average of the Ten Years -	99,978	89,463	51,721	- -	32,820	2,874	1,090

(B.)

VALUE of PROPERTY Stolen and Recovered.

YEAR.	Computed Value of Property Stolen.	Computed Value of Property Recovered.	REMARKS.
	Rs. *a.* *p.*	*Rs.* *a.* *p.*	
1843 - - - - -	4,70,548 7 7½	86,108 9 5	18·5 percentage of recovery to loss.
1844 - - - -	4,55,215 1 5	65,131 – 4	14·0 „ „
1845 - - - -	5,75,572 10 1	85,115 12 3½	14·7 „ „
1846 - - - -	4,68,083 6 5½	78,229 7 8½	16·7 „ „
1847 - - - -	5,69,851 10 10½	82,726 15 1¾	16·2 „ „
1848 - - - -	5,71,039 14 3	79,855 5 –½	13·9 „ „
1849 - - - -	5,58,913 1 9½	75,638 12 8½	13·5 „ „
1850 - - - -	5,49,823 7 6¼	81,292 14 7¾	14·7 „ „
1851 - - - -	6,34,944 13 9¾	80,676 – 2½	12·7 „ „
1852 - - - -	6,10,279 9 5½	61,462 8 4¼	10·0 „ „
TOTAL - - -	54,63,262 3 2½	7,76,237 5 10½	14·2 „ „
AVERAGE - -	5,46,327 3 6	77,623 11 9	14·2 „ „

(C.)

STATEMENT of THEFT and BURGLARY from 1843 to 1852 inclusive.

YEAR.	CRIME.	Number.	Cases inquired into.	Persons Arrested.	Convicted.	Discharged.	PENDING.
1843 - -	Theft - -						*Remark.*—There is no Return of this nature for these two years, the Average is therefore Octennial instead of Decennial, as in the other Statements.
	Burglary - -						
1844 - -	Theft - -	- -	- -	- -	- -	- -	
	Burglary - -						
1845 - -	Theft - -	10,116	5,221	9,859	3,662	5,881	316
	Burglary - -	11,227	2,323	3,773	1,288	2,280	205
1846 - -	Theft - -	9,956	5,162	8,932	3,299	5,278	355
	Burglary - -	10,660	1,725	3,155	1,144	1,790	221
1847 - -	Theft - -	10,487	5,143	8,319	3,065	4,964	290
	Burglary - -	11,570	1,858	3,826	1,345	2,319	162
1848 - -	Theft - -	11,291	5,453	8,451	3,283	4,929	239
	Burglary - -	13,159	1,900	3,505	1,100	2,259	146
1849 - -	Theft - -	11,613	5,535	8,199	3,414	4,533	252
	Burglary - -	14,143	2,161	3,454	1,236	2,068	150
1850 - -	Theft - -	12,881	5,799	7,948	3,365	4,325	258
	Burglary - -	16,403	2,054	3,453	1,149	2,112	192
1851 - -	Theft - -	14,115	5,354	10,448	4,491	5,494	203 pending, 20 died, 10 escaped, 164 transferred 66.
	Burglary - -	19,716	2,100	3,579	1,286	2,066	170 pending, 9 died, 4 escaped, 12 transferred 32.
1852 - -	Theft - -	13,531	5,486	9,640	4,217	4,987	203 pending, 14 died, 17 escaped, 199 transferred.
	Burglary - -	18,987	1,997	3,658	1,413	1,993	189 pending, 10 died, 2 escaped, 51 transferred.
TOTAL -	Theft - -	93,990	43,153	71,796	28,796	40,390	2,606
	Burglary - -	1,15,565	16,118	28,403	9,061	16,886	1,555
AVERAGE of 8 Years -	Theft - -	11,623	5,394	8,977	3,599	5,048	
	Burglary - -	14,483	2,014	3,550	1,224	2,110	

No. 15.
Note, by Mr. Secretary Buckland.
30 April 1856.

No. 1.

(D.)

ABSTRACT STATEMENT of the Number of Persons brought to Trial, Acquitted, and Convicted, by the Magistrates and their Assistants in the Lower Provinces, and the Number Committed to take their Trial at the Sessions, from the Year 1843 to 1852 inclusive.

YEAR.	Prisoners under Examination on the 1st January.	Apprehended during the Year.	Received by Transfer.	TOTAL.	Convicted.	Acquitted.	Committed.	Died.	Escaped.	Transferred.	Pending.			Explanation of Column 7.			
											In Jail.	On Bail.	TOTAL.	Summoned by the Magistrate and his Subordinates.	Sent in by the Police.	Released on Bail by the Police and not required to appear before the Magistrate.	TOTAL.
1843 - - -	1,858	83,103	353	85,319	41,911	36,310	3,782	107	644	388	599	1,578	2,197	- - -	- -	16,290	36,310
1844 - - -	2,167	85,318	345	87,830	46,609	33,935	4,085	92	564	541	594	1,410	2,004	- - -	- -	10,666	33,935
1845 - - -	2,004	89,241	425	91,670	50,387	34,250	3,777	118	359	570	642	1,567	2,209	15,328	8,699	10,223	34,250
1846 - - -	2,209	90,041	373	92,623	53,080	32,866	3,522	65	442	386	760	1,502	2,262	16,417	7,798	8,651	32,866
1847 - - -	2,257	93,313	355	95,925	54,319	33,786	3,558	74	617	423	712	1,436	2,148	15,871	9,802	8,113	33,786
1848 - - -	2,147	96,806	215	99,168	57,550	34,678	3,484	105	742	292	671	1,646	2,317	17,356	9,212	8,110	34,678
1849 - - -	2,317	99,424	302	1,02,043	59,363	35,628	3,663	90	585	388	694	1,632	2,326	18,223	10,569	6,836	35,628
1850 - - -	2,326	93,606	420	96,352	55,252	34,292	3,615	83	493	468	637	1,512	2,149	18,633	8,773	6,886	34,292
1851 - - -	2,151	92,295	507	94,935	52,622	34,680	3,701	110	535	701	907	1,697	2,604	18,244	9,525	6,911	34,680
1852 - - -	2,601	89,109	405	92,115	53,692	30,784	3,805	137	611	589	820	1,677	2,497	15,734	9,128	5,922	30,784
TOTAL - -	22,037	9,12,261	3,700	9,37,998	5,24,785	3,41,209	36,992	981	5,592	4,746	7,036	15,657	22,713	1,56,826	73,506	88,608	3,41,209
AVERAGE - -	2,203	91,226	370	93,799	52,478	34,120	3,699	98	559	474	703	1,505	2,271	15,682	- -	- - -	34,120

No. 2.

(E.)

ABSTRACT STATEMENT showing the Number of Persons brought to Trial, Acquitted, and Convicted by the Sessions Courts in the Lower Provinces, and the Number of Persons whose Cases were referred to the Nizamut Adawlut, from the Year 1843 to 1852 inclusive.

YEAR.	Prisoners under Trial on the 1st January.	Committed during the Year.	Received back from the Nizamut Adawlut.	Received by Transfer.	Total.	Convicted.	Acquitted.	Referred to Nizamut Adawlut.	Commitment cancelled.	Died.	Escaped.	Transferred.	Pending.
1843	453	3,789	20	8	4,270	2,096	1,113	592	14	25	6	15	409
1844	409	4,085	52	13	4,559	2,313	1,237	475	19	29	4	15	467
1845	467	3,780	16	13	4,276	2,131	1,289	471	28	30	1	8	318
1846	318	3,522	13	183	4,036	1,782	1,216	400	23	19	14	156	426
1847	426	3,576	13	241	4,256	1,764	1,300	504	54	20	- -	201	413
1848	413	3,557	4	11	3,985	1,797	1,183	458	16	29	2	- -	500
1849	500	3,663	6	8	4,177	1,839	1,361	535	32	24	1	2	383
1850	383	3,742	17	5	4,147	1,740	1,226	529	39	21	- -	5	587
1851	587	3,707	63	12	4,369	1,945	1,270	523	67	17	3	5	539
1852	539	3,855	20	3	4,417	1,944	1,183	640	80	34	1	3	532
TOTAL	4,495	37,276	224	497	42,492	19,351	12,378	5,127	372	248	32	410	4,574
AVERAGE	449	3,727	22	49	4,249	1,935	1,237	512	37	24	3	41	457

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Note by Mr. Secretary Buckland.
30 April 1856.

No. 1.
Note by
Mr. Secretary
Buckland.
30 April 1856.

No. 3.

(F.)

ABSTRACT STATEMENT showing the Number of Criminal Cases referred or appealed to the Nizamut Adawlut, with the Orders passed thereon, together with an Abstract Statement of Criminal Business disposed of, from the Year 1848 to 1852 inclusive.

YEAR.	TRIALS REFERRED UNDER THE REGULATIONS.							TRIALS CALLED FOR ON PERUSAL OF THE ABSTRACT.							PETITIONS OF APPEAL From Sentences of the Sessions Courts, presented to the Court or forwarded by the Sessions Judge.					
	Number of Cases pending on the 1st of January of each year.	Number of Cases received during the year.	Total Number of Persons under Trial.	Number of Persons convicted	Number of Persons acquitted.	Number of Persons whose Cases were remanded.	Number of Cases pending at the end of the year.	Pending on the 1st January of each year.	Received during the year.	Total.	Order confirmed.	Order modified.	Order reversed.	Pending at the end of the year.	Pending on the 1st January of each year.	Received during the year	Total.	Petition rejected.	Petition admitted and the Case called for.	Pending at the end of the year.
1848 - -	8	256	560	373	125	37	9	1	20	21	6	2	12	1	14	181	195	136	38	21
1844 - -	9	199	472	265	179	14	7	1	19	20	7	4	9	–	21	246	267	117	137	13
1845 - -	7	215	518	315	114	10	15	–	8	8	–	–	5	3	13	319	332	100	221	11
1846 - -	15	204	453	303	110	10	20	3	14	17	5	3	7	2	11	238	249	43	199	7
1847 - -	20	201	480	331	141	4	3	2	7	9	3	–	5	1	7	218	275	22	198	5
1848 - -	3	193	438	285	141	4	4	1	16	17	8	1	8	–	5	227	232	21	207	4
1849 - -	4	241	583	398	133	10	14	–	16	16	6	2	7	1	4	285	289	2	286	1
1850 - -	14	202	519	305	176	16	8	1	25	26	10	4	11	1	1	378	379	48	325	6
1851 - -	8	227	522	318	173	10	10	1	22	23	8	7	8	–	6	489	495	108	374	13
1852 - -	10	244	652	431	188	16	6	–	27	27	18	8	5	1	13	607	620	153	448	19
TOTAL - -	98	2,182	5,497	3,324	1,480	131	96	10	174	184	71	26	77	10	95	3,188	3,333	770	2,433	100
AVERAGE -	9	218	549	332	148	13	9	1	17	18	7	2	7	1	9	318	333	77	243	10

— No. 16. —

No. 16.
Minute by the Governor-General.
18 February 1857.

MINUTE by the Right Honourable the Governor-General.

Bengal Police.—The Honourable Court of Directors, in their despatch in the Judicial Department, No. 41, dated the 24th September 1856, have expressed their conviction that an immediate and thorough reform of the police in all the Old Provinces of India is loudly called for. They have pointed generally to the evils of the existing system, have suggested remedies for those evils, and have desired the Government of India to take the subject into its early consideration; and, after communication with the other Presidencies, to report fully its sentiments as to the expediency of the general reorganisation of the police throughout India upon some such system as that which obtains with respect to the police of the Punjab, or perhaps the constabulary of Ireland, and as to the mode and cost of the proposed reform.

2. This despatch has been communicated to the several local* Governments with a view to obtain the opinions of those Governments on the Honourable Court's suggestions. But we have already before us the recommendations of the Lieutenant-Governor of Bengal on all the material questions of police and criminal justice relating to the Lower Provinces. These, therefore, we may proceed to consider without waiting for a further communication from the Lieutenant-Governor, whose opinion on the several points referred to in the Honourable Court's despatch are already on record.

3. As the Honourable Court has invited the Government of India to report fully its sentiments as to the expediency of the general reorganisation of the police of India upon some such system as that of the Punjab, or perhaps of Ireland, I conceive that I shall best answer that call by stating freely such objections to the Honourable Court's plan as have occurred to me, and by proposing the adoption of the course which has most recommended itself to my judgment wherever a departure from that plan appears to me advisable.

4. The Honourable Court are in favour of one general plan of police organisation for the whole of India, modified according to circumstances. The main features of this plan are that in each Presidency or Government there should be one general superintendent of police; that there should be a force under him, consisting of horse and foot, superintended in its larger divisions by European subalterns, and equipped, clothed, and disciplined, so as to render it efficient and serviceable without giving it an absolutely military organisation; that the duties of this force should be purely of a preventive character, namely, "the preservation of the public peace," and "the adoption of necessary measures for the prevention of crime;" that the detective police should form a constituent portion of each battalion of the preventive police under the European officers; that the preventive police should have nothing to do with the preparation of evidence, but that the detective police should for the present have power to make preliminary inquiries of a judicial character; that the size of the districts should be diminished; that the police of each district should be taken out of the hands of the magistrate and given to an European officer with no other duties, and responsible to the general superintendent; that no native police officer should be trusted with fiscal powers; and lastly, that the pay of the detective police should be raised, and more effectual measures taken to punish delinquency and reward good service.

5. I venture to think that the adoption of a common plan for all India, founded upon the suggestions of the Honourable Court as above stated, would involve much change and expense that is not really necessary. Reform of the police is most needed in Madras and in the Lower Provinces of Bengal, but the imperfections which abound in the systems of police in these two great divisions of India are not the same, and, except in one respect, of the insufficient pay of the native officers, have their origin in different causes. So, likewise, Bombay and

* Bengal, N.W. Provinces, Madras, Bombay.

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and the N. W. Provinces, where reform is much less needed, differ materially from each other, and from the other provinces in respect to the condition of the people, the nature of the land tenures, the physical aspect of the country, and other important characteristics; and a system of police which may answer well in the one would be inapplicable to the circumstances of the other.

6. We shall, therefore, in my opinion, be far more likely to arrive at a sound practical result, and to provide effectually for the protection of life and property throughout India, if we treat each Presidency and Lieutenant-Governorship separately, according to its own wants, of course bearing in mind certain leading principles which must necessarily be common to all, than if we postpone consideration of the Bengal question until replies are received from the other Presidencies, and endeavour to frame one scheme which, with minor modifications, shall be equally applicable to all.

7. In considering the reform of the police of Bengal, the first point upon which I shall touch is the appointment of a general superintendent of police for the whole Presidency, a point upon which the Honourable Court have strongly insisted, and to which they attach the greatest importance. The desire which the Court entertain of giving a semi-military organisation to the police of each Presidency naturally enhances in their view the importance of aiming at uniformity of system by the creation of a single and responsible head of the whole force. I am, however, convinced, for reasons that will be given presently, that any such semi-military organisation of the police of Bengal generally is inapplicable to the circumstances of the Province; and, therefore, I shall consider the question of appointing one general superintendent of police in Bengal with reference only to a police which is to be established mainly for detective purposes, and the apprehension of furtive criminals, but which will be aided by such semi-military force, like the station-guards at Patna, the Hill-Rangers at Bhaugulpore, or the new police corps for the Sonthal Pergunnahs, as may be found necessary for the suppression of disturbance in particular localities, or to support the ordinary police in case of resistance.

8. The Government of Bengal embraces an enormous extent of territory, extending from the magistrates' district of Champaraun in the Patna division to the district of Sandoway in Arracan, a distance of 1,000 miles; from the district of Debroogurh in Assam to the district of Pooree in Cuttack, a distance of 850 miles; and from the district of Tipperah in the Chittagong division to the boundary of the province of Nagpore, a distance of 650 miles. In this extended space there are five principal divisions,* in which as many different languages are spoken; and there are also numerous tracts inhabited by aboriginal and wild tribes, none of whom understand the languages spoken by the others or by the more civilised denizens of the plains. These several divisions and tracts are separated from each other, not only by diversity of language and custom, but by the absence of all means of ready communication; so that there is little community of feeling or interest between the corresponding ranks of the population in each, and none at all between the criminal classes, the individuals of which carry on their depredations within their own narrow and confined limits, and (except the Thugs who are now well-nigh exterminated, and the Bengal dacoits, the gangs of whom do not extend their operations beyond the districts adjoining that in which their headquarters are established) almost without concert of any kind.

9. The experiment of having one general superintendent of police for this large and incongruous territory has been tried, and has failed. The office of superintendent was created in 1837 and though it was found impossible to place under him any of the Non-regulation Districts,† or the province of Cuttack; and though it was afterwards found necessary to relieve him of the division of Chittagong, yet, even within this comparatively small, though actually most extensive sphere of authority, it was found that the superintendent could exercise little more than a nominal control over the district magistrates; that he was unable to visit the more distant districts except at rare intervals, and those nearer more than once a year; and that all that he did could be done far more effectually by the

* Behar, Bengal, Orissa, Assam, Arracan.
† Chota Nagpore, Assam, Arracan, Darjeeling, Cachar, Cossya Hills.

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the local government itself, aided by local superintendents of police, each charged with the control of the police in manageable divisions, consisting of four or five districts. Accordingly, so lately as 1854, the general superintendency of police was abolished, and the duties of local superintendents of police were again assigned throughout the country, as they had all along been in a great part of it, to the commissioners of revenue. It has not, I believe, been found that the control over the police in Bengal has, in any respect, been weakened by this arrangement. The system prevails now not only in every part of the Bengal Presidency without exception, but in the Non-regulation Provinces of the Punjab, Oude, and Pegu, and it is everywhere found to work well, so far as the materials on which it has to work enable it to do so.

10. It may be added, that, if it has been found that one general superintendent of police could not control the operations of the civil police in a portion of the Lower Provinces, there is very strong ground for presuming that such an officer, however great his aptitude and energy, would be unequal to the duty of controlling the semi-military and civil police, augmented as it will be in numbers, throughout the whole of those provinces.

11. The next question which arises for consideration is the constitution of the police force.

12. In the Punjab, from which the Honourable Court desire that the model should be taken for all India, the preventive or military police consists of six regiments of foot, containing 5,400 men, and 27 troops of horse, numbering 2,700 men, and is superintended by four British officers as police captains. The infantry furnish guards for jails, treasuries, frontier posts, and escorts for treasure and civil officers in transit. The cavalry are posted in detachments at the stations; and smaller parties, stationed along the grand lines of road, serve as mounted patrols.* Both horse and foot are ready to reinforce the civil police, "the former to crush resistance, the latter to expedite pursuit." The civil police in the Punjab are very much on the same footing as that in the North-western Provinces and Bengal, but they are much more numerous. The territory is divided into 228 police jurisdictions or thannahs, in each of which is a police officer (darogah), on a salary varying from 100 rupees to 50 rupees a month, with one or two deputies, and about 30 policemen. The total strength is about 6,900 of all grades. But in the Punjab and the North-western Provinces the police establishments of the thannahs are controlled by the tahsildars, each of whom, in addition to his fiscal duties, exercises a vigilant control over the police within his jurisdiction, which on an average consists of about three thannahs. This is an important link in the chain of police management between the district magistrate and the darogah, which in Bengal is either wholly wanting, or is imperfectly supplied by the joint, deputy, or assistant magistrates in charge of subdivisions.

13. It is to be observed that the immediate duties of the military or preventive police are, strictly speaking, not those of policemen at all. It is not by them that crime is either detected or prevented, or criminals traced or arrested. Their primary business is of a military rather than a civil character; and they are much more frequently employed in relieving the regular troops of irksome duties than in assisting the police. They are brought into play as a civil power only when resistance is offered to the police, or when speed is necessary in the pursuit of offenders along the principal lines of road. Moreover, the detective police do not form a constituent part of the preventive police, but are quite independent of them, and under a perfectly separate organisation.

14. Now, in Bengal the nucleus of a semi-military force, sufficient for the occasional support of the ordinary police, as well as for other duties, already exists in the Patna Station Guards, the Bhaugulpore Hill Rangers, and the corps which has recently been raised for police service in the Sontal pergunnahs. The Patna Guards have been organised on their present footing since 1848. They supply personal guards to the commissioner of the division and the judges of the districts named in the margin.† They also furnish jail, treasury, and opium guards

* Punjab Report for 1850-51, para. 162.
† Patna, Shahabad, Behar, Sarun, Chumparun, Tirhoot.

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guards for these districts, and escort for treasure and prisoners. A portion of the force remains at head-quarters at Patna, where they are drilled and disciplined under the eye of the European commandant, and are available for relief and for aiding the police in any emergency. The Bhaugulpore Hill Rangers, in like manner, supply personal and station guards in the districts of Bhaugulpore, Purnea, and Monghyr, and are also available for escort duty, and as an auxiliary police force in case of need.

15. In 1845 the Government of Bengal proposed to form three corps of station guards, one for the districts in the neighbourhood of Patna, a second for the districts of the Delta and Western Bengal, and a third for Bengal north and west of the river Ganges. This resulted in the establishment of the Patna police-guard, by way of experiment; but the formation of the other two corps was postponed, partly on the ground of economy, and partly owing to a doubt whether two additional corps would suffice for the duties assigned to them in the wide extent of territory in which it was proposed to employ them. Since then, and not longer ago than last year, the Lieutenant-Governor has proposed to raise three such corps, in addition to the one already sanctioned for the Sontal pergunnahs.

16. It appears to me, that if the civil police force be reorganised in the manner hereafter to be mentioned, and if due provision be made for its proper supervision and control, all the objects of a military police, so far as concerns Bengal, will be answered by the enrolment of two more corps of station guards, under the same organisation as that of the Patna station guards and the Sontal police force. I am disposed to think that if the corps of Bhaugulpore Hill Rangers be made, as it ought to be, a purely civil corps, by means of it and of the Sontal police regiment, station guards could be supplied to all the Bengal districts to the west of the Bhagerutty, as well as to Dinagepore and Malda; and then one corps with its head-quarters at Berhampore, and another with its head-quarters at Dacca, would probably give all that is required. The additional expense involved in entertaining these two corps of station guards would be trifling, as a large number of burkundauzes now employed to guard the several gaols and treasuries would be dispensed with.

17. The head-quarters of the Behar corps would be, as at present, at Patna, where it is most needed. The hill-rangers would have their head-quarters at Bhaugulpore; the Sontal corps at Soory; and the Berhampore corps at Berhampore, all within reach of the Sontal pergunnahs; and the Dacca corps would have its head-quarters at the spot in Bengal at which it has been most frequently surmised that resistance to the constituted authorities may occur.

18. Cuttack is to a certain extent supplied with a reserve police force in the Balasore paiks; Chota Nagpore is preserved against resistance or disturbance by its local battalion. Assam has a similar protection, and so has Arrakan.

19. For these several corps no general superintendence but that of the local Government, and no special organisation other than that of internal discipline, is required. The commandant of each should be under the orders of the commissioner in whose division he is placed, and the detachments in each district under the orders of the local magistrate. Discipline might be insured by occasional inspection of the men at head-quarters by a military officer selected for the purpose.

20. I now come to the constitution of the civil police. On this subject we have had before us for a long time a recommendation from the Government of Bengal, that the salaries of the mohurirs and jemadars who occupy the position of the deputy police officers in the Punjab, and also the salaries of the burkundauzes should be considerably increased. The Lieutenant-Governor, in a letter dated 30th April 1855, has submitted a definite proposition on this head, involving an additional expenditure of 3,38,609 rupees a year. It is proposed by His Honor that the mohurirs, instead of their present pay, varying from 20 to 5 a month, should one quarter of them receive 40, another quarter 35, and the rest 30 a month; and that the jemadars, instead of their present pay varying from 15 to 4 a month, should one quarter of them receive 20, another quarter 15, and the rest, 10 a month. It is further proposed that the burkundauzes, who are now paid at rates varying from 6 to 2 a month, should one quarter of them receive 6,

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another quarter 5, and the rest 4 a month. The proposed increase of cost is as follows :—

	Rs.
For Mohurirs - - - - - - -	1,91,971
„ Jemadars - - - - - - -	54,640
„ Burkundauzes - - - - - -	91,998
TOTAL - - - *Rs.*	3,38,609

The absolute necessity for some such measure as this has been long since recognised* by the Government of India. The proposal has been agreed to by my Honourable Colleagues, and should be at once sanctioned. It is, to my mind, an essential point in police reform, without which no other improvements we can adopt will be of any avail; but I am led to entertain some doubt whether any burkundaz ought to receive less than five rupees a month† in any part of the country, and there is still abundant reason to fear that the police in every grade is numerically insufficient, and that it will be found necessary, besides increasing the pay of the existing establishment, considerably to augment its strength. I think the designation of mohurir, meaning strictly "a clerk," should be changed to that of naib darogah.

21. The Lieutenant-Governor has proposed, that a "few considerable prizes be held out to darogahs, in the shape of increased salaries for particularly distinguished service." To this I do not object, provided it be shown in each individual case that the deserving officer is not qualified for promotion to the deputy magistracy. I think that this sort of promotion is the natural and proper reward for a successful darogah of police, and likely to be the most effective in its influence, and I hope that it will be found practicable to award it more generally than the Lieutenant-Governor supposes, especially now that the higher offices in the police are beginning to be filled by natives of character and English education. In this view it appears to me that the Government of India might agree to grant not more than 10 special salaries of 200 rupees, and as many of 150 rupees for distinguished service, to be given only on the condition above expressed, and not by any means as a matter of course.

22. The next point of importance, as it seems to me, is to supply the want which is felt in Bengal from the absence of the tahsildars, who occupy so prominent a position in the system of the Punjab and the North-western Provinces. The number of thannahs in the Lower Provinces, after deducting for city thannahs of a very small extent in the cities of Patna, Moorshedabad, and Dacca, and for the thannahs at the Sudder stations, is said by the Lieutenant-Governor, in his Minute of the 30th April last, to be about 400.‡ The geographical extent of the Bengal thannahs is generally greater than that of the thannahs in the North-western Provinces and Punjab, and the facility of communication from one part of a district to another is less. Making allowance for this, and remembering, on the other hand, that the tahsildars are burdened with heavy fiscal duties, I am disposed to think that the police subdivisions in Bengal may properly consist, on an average, of from three to four thannahs, each under an officer exercising plenary police powers, and also judicial powers, either of an ordinary assistant, or of an assistant with special powers, or of a joint magistrate, according to circumstances. Of these officers, who, if uncovenanted, may very properly be designated deputy magistrates, and who may occasionally be members of the covenanted service, 133 will be required.

23. The

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* *Note.*—In 1843, the Government of India, in sanctioning the augmentation of the darogahs' salaries, desired that the principle might be carried still further, and extended to other classes of police officers; and promised to approve such extension if the increase in the darogahs' pay was found to answer. The Honourable Court, in reference to this, merely observed that the present rate of charge should not be increased without their previous sanction; and nothing has since been done in the matter.

† *Note.*—Mr. Dampier recommended, in 1840, that there should be two grades of burkundauzes on 5 and 6.

‡ There must be some error in this. The number of thannahs is stated in Mr. Secretary Grey's letter, of the 30th April 1855, to be 527; so that, after allowing for city and Sudder thannahs, there must be about 450 rural thannahs to be provided for.

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23. The Lieutenant-Governor states, that there are only 33 officers already available for this service, and that, therefore, 100 more will be needed, whose salaries, according to the scale already fixed for the uncovenanted executive service, will amount to 4,21,200 rupees. This number, His Honor observes, may be diminished, if the strength of the covenanted service be increased. The ordinary strength and pay of the uncovenanted service in Bengal is shown in the margin;* but there are at present 10 supernumeraries, all of the lowest grade, whose salaries amount to 24,000 rupees a year, making the total present expense 4,45,200 rupees a year. Now, if the number be made up to 200, the gradations may be properly arranged somewhat on the present scale, and with some addition to the number of those who are paid at the higher rate, though I am not prepared to agree with the Lieutenant-Governor in thinking that a higher rate of salary than 700 rupees a month, with a pension in prospect, is necessary for securing the most efficient service. I propose, therefore, the following scale:—

					Rs.
First Class	- 10	at	700	- - -	7,000
Second Class	- 15	at	600	- - -	9,000
Third Class	- 25	at	500	- - -	12,500
Fourth Class	- 40	at	400	- - -	16,000
Fifth Class	- 50	at	300	- - -	15,000
Sixth Class	- 60	at	200	- - -	12,000
TOTAL	200				71,500
					12
				Rs.	8,58,000

The total increase of expense under this head will be 4,12,800 rupees, and I believe it to be absolutely necessary.

24. With assistance of the character thus obtained, and with subordinate police, stimulated to a zealous discharge of their duties by fair wages and a prospect of promotion, I am not inclined to think that any of the districts of Bengal will be too extensive to be managed by a magistrate at its head-quarters, even though he be employed on duties of another kind, or that any division of such districts is required, at all events as a general measure. To any special application for the division of a magisterial district, the Government of India will doubtless always be ready to attend.

25. I now come to the important question discussed in some of the papers before us, as to whether, in certain Regulation districts in the Lower Provinces, the offices of magistrate and collector should continue separate, or whether they should be united in one person. After giving the subject my best consideration, and carefully weighing the arguments which have been adduced on either side, I have come to the conclusion that the two offices where now separate should be reunited, and that the system which is found to work equally well in the Non-Regulation districts in the North-Western Provinces, and in several districts of the Lower Provinces, should be uniformly adopted. It seems to me, speaking with sincere deference to the opinion of my honourable colleague, Mr. Grant, that reason, no less that experience, points to the necessity of concentrating the whole executive power of the Government, in each district of Bengal, in the hands of one experienced man. We have the authority of Lord Dalhouse, after four

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	Rs.
1 at 700 - - - - - - - -	700
9 at 600 - - - - - - - -	5,400
15 at 500 - - - - - - - -	7,500
20 at 400 - - - - - - - -	8,000
25 at 300 - - - - - - - -	7,500
30 at 200 - - - - - - - -	6,000
	35,100
per annum, *Rs.*	4,21,200

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four years' experience of local administration, in favour of the measure; and we have the earnest and repeated recommendation of the Lieutenant-Governor on the same side. The system of separating the two offices seems to have been adopted rather on theoretical grounds, and in the hope that any change would conduce to the improvement of the police, than from the experience of practical inconvenience from their union; though if it had been otherwise, the previous system can hardly be said to have had a fair trial, seeing that it existed only a few years, and at a time when the chief energies of the collector-magistrate were taxed for the performance of the onerous duties imposed by the sudden and energetic enforcement of the resumption laws

26. The Honourable Court have in their recent despatch expressed a clear opinion, that though the union of fiscal and police powers in the hands of a subordinate native officer is to be avoided, and where it exists to be discontinued, there is not "the same objection to the combination of magisterial and fiscal powers in the hands of our European officers, because we can better hope that they will not abuse their power, and because by employing the collector as the principal magistrate of each district, we are able to obtain for the chief administration of the penal laws a more efficient, and especially a more experienced class of officers than would otherwise be available."

"This," they add, "is an important consideration, which ought never to be lost sight of." I beg respectfully to express my thorough concurrence in this opinion.

27. I agree with the Honourable Mr. Grant that a system of administration which suits an uncivilised country may not be adapted to one more advanced in civilisation, but there still remains the question whether the districts in Bengal, in which the offices have been divided, are in that advanced state of civilisation which renders the division of magisterial and fiscal function a preferable mode of local administration to that in which these functions are united; and whether there is such material difference in point of civilisation between those districts and the districts in which no such division has taken place, or between those districts and all the districts of the North-western Provinces, as to require a separate and more theoretically perfect system of administration. Judging from all the evidence before me as to the state of things in the Upper and Lower Provinces of the Bengal Presidency, I find myself constrained to answer this question in the negative. I think that, in Bengal especially, the efficient administration of the penal laws requires all the force and influence which the Government can bring to bear upon it, and that this force and influence will be increased by substituting for the divided authority now partially existing in these provinces that union of local control which, as it seems to me, is much better suited to the character and wants of the people. I do not think that the case would be met by raising the salaries of the magistrates and reducing those of the collectors, or by putting them upon an equality. An inexperienced collector may be as mischievous as an inexperienced magistrate, and it is not desirable that any man should exercise independent authority of any kind over a whole district until he is ripe for it. And even if experience could be secured in both offices, the division of authority is to be avoided rather than sought. As regards the people, I fully believe that what has been called the patriarchal form of government is, in their present condition, most congenial to them; and best understood by them: and as regards the governing power, the concentration of all responsibility upon one officer cannot fail to keep his attention alive, and to stimulate his energy in every department to the utmost, whilst it will preclude the growth of those obstructions to good government which are apt to spring up where two co-ordinate officers divide the authority.

28. Neither do I think that a parallel can be drawn between a Bengal mofussil district and the presidency town of Calcutta in respect to a division of offices. In the former the collector is and must be an officer of high authority, whose relation to the zemindars and to the rest of the agricultural community, in connexion with the settlement and collection of the land revenue, and the disposal of quasi-judicial questions relating to it, must always be one of influence and power, and whose co-operation with the magistrate it is most important to secure by the closest union. In Calcutta, on the other hand, the magistrate, an officer of long experience, with an expensive and numerous staff of European and native police at his command, and

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assisted by justices of legal attainments and practice, would derive no appreciable addition of power from being charged with the collection of petty ground-rents, and the excise upon spirits, a duty entrusted to an uncovenanted officer under the control of the collector of the 24-Pergunnahs. Moreover, the concentrated wealth and civilisation of the town of Calcutta are such as to require and support a more perfect division of labour in its local administration than any entire district or town of the mofussil can be expected to claim, upon like grounds, for many generations to come.

29. I propose, therefore, that the Lieutenant-Governor be at once authorised, as opportunities occur, to reunite the offices of magistrate and collector throughout the Lower Provinces wherever they have been separated, assigning to the united offices the salary of 27,000 rupees a year, now drawn by the collectors and magistrates in the North-western Provinces, but liable to reduction on the report of the Commissioner on Civil Salaries, and absorbing as many of the separate magistracies as may be necessary to avoid any additional expense, leaving the remaining salaries now assigned to magistrates available for paying the covenanted officers who will then be employed as joint-magistrates and deputy-collectors in each district, precisely on the same system as in the North-western Provinces. It is to be observed that the officers are now united in thirteen of the Regulation Districts, viz., the three districts of the Cuttack Province, Chumparun, Baraset, Furreedpore, Bancora, Noakolly, Pubna, Bogra, Malda, Beerbhom, and Bhaugulpore. In the two last-mentioned, it was brought about only last year, with the sanction of the Government of India, after the suppression of the Sontal insurrection.

30. But I think it will be advisable, as it is certainly in accordance with the views of the Honourable Court, that the joint magistrate in each district should be charged with the immediate responsibility of controlling the police of the district, somewhat after the fashion of the district superintendent of police in Bombay. The Bengal joint magistrate, like the Bombay superintendent of police, would be under the general orders of the magistrate; but while the magistrate confines himself for the most part to judicial and administrative matters, the joint magistrate would have the control of the executive police, and take the initiative in the prevention and detection of crime. I have already mentioned my reasons for thinking it inexpedient to give a more military character to the Bengal police than it now bears; and it is in accordance with those reasons that I propose that the immediate control of the police should be in the hands of a civil rather than in those of a military officer. The station guards, when their interference is needed to aid the civil police, will be at the disposal of the magistrate and his deputy, but there seems no necessity for placing them, as regards discipline or internal organisation, under any other command than that of their own officers, who will be bound, however, to pay implicit obedience to the authorities of the district in which they are stationed.

31. Having considered the questions which relate directly to the constitution of the stipendiary police of Bengal, I proceed to offer a few remarks on the cognate subjects referred to in the Lieutenant-Governor's Minute of the 30th April last. I propose to discuss in a separate Minute the very important subject of the village watch, the condition of which, owing to the uncertainty which has been suffered to exist as to the persons who are liable to pay for its support, has become deplorable.

32. I agree generally with the Lieutenant-Governor in the remarks recorded by his Honour in the 49th to the 55th paragraph of his Minute, regarding the union of the judicial and executive powers in the same hands. I conceive it to be quite in accordance with the notions entertained by the people of these provinces, and well adapted to their state of civilisation, that the officers who are charged with the duty of superintending and directing the operations of the police should also exercise the powers of a magistrate, to try and punish offenders except in heinous cases. In regard to the magistrate of a district, I am of opinion, that—although it is convenient that he should make over the immediate management of the police to his head-assistant, the joint magistrate, and devote a greater portion of his attention to the trial of the heavier cases within his competence, and the preparation of cases which have eventually to be committed to the sessions for trial—it is most conducive to the public good that he should exercise a general

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a general control over the proceedings of his subordinate officer, and interfere when it may be necessary for him to do so. On the other hand, I see no reason why the joint magistrate should not devote some portion of the time he can spare from police duties to the disposal of judicial business. And with respect to the deputy magistrates in charge of subdivisions, though their attention should be primarily given to police matters, it seems desirable that they should also exercise judicial authority in a large class of cases, referring only such cases as they may not have leisure to deal with to the moonsiff for disposal. In the event of too much being left to the moonsiff, the monthly statements furnished by the deputy magistrate to the magistrate would show it immediately.

33. I am not averse to that part of the scheme of the Indian Law Commissioners which would invest all the moonsiffs with criminal powers, at any rate, to the extent of those now exercised by assistant magistrates; and I think it expedient that the Lieutenant-Governor should vest with the higher or special criminal powers all such of the class of native judges as are capable of exercising them. All petty complaints of which the police do not take cognisance * might be received, in the first instance, by the moonsiff; and the police might be empowered to send to the nearest moonsiff for trial all cases which seem to them of such trivial importance as not to require the interference of the magistrate, or the deputy magistrate; but I do not think that it would be conducive to the convenience of the people, or otherwise expedient to denude the magistrate, or the deputy magistrates, of all judicial powers, or to prevent the magistrate from exercising a control over the judicial proceedings of the moonsiff on the criminal side.

34. Regarding the salaries and position of the native judges, I shall record my opinion in a separate Minute.

35. I incline strongly to the opinion that the proceedings of the subordinate criminal courts should be of the simplest possible description. I am also of opinion that there should be no appeal of right from the sentence of a subordinate court in criminal matters; but that the magistrate should have authority to revise or modify the decision of every assistant or officer exercising the powers of assistant within his jurisdiction, and that the judge should, in like manner, have authority to revise or modify the decision of every magistrate or officer exercising the powers of a magistrate. The review would take place as a matter of course, and any person would be competent to call the attention of the magistrate or judge to any point upon which the decision had done wrong to any one.

36. In the last paragraph of their despatch the Honourable Court suggest whether the influence, services, and means of information of the landholders and European residents in the Mofussil might not be made more available than at present for purposes of police, especially for the prevention and detection of the more heinous crimes. This subject is treated in the 90th and 91st paragraphs of the Lieutenant-Governor's Minute of the 30th April last, and his Honor, after recapitulating the arguments which may be used in favour of, and against, the measure, though he does not recommend its immediate adoption, leans to the opinion, "that a careful and judicious enlisting into the service of the public of the rich and powerful zemindars and planters of the interior has in it much that seems to promise well, and that it should, at all events, be kept in view as a measure to be at some, perhaps distantly, future time, gradually accomplished."

37. As bearing on this point, I desire to submit for the consideration of the Council the fact that, in the island of Ceylon, a considerable number of unpaid justices of the peace have, for some years past, been appointed to aid the stipendiary magistrates in the disposal of cases. Many of the European planters, and most of the respectable natives of each province, have received a commission. They are not vested with a power of punishment, but they can remand a prisoner for further examination, or commit him to take his trial before a competent court, and they can take recognisances for good behaviour. They have also the power

* Such as adultery, abusive language, calumny, slight trespass, or petty assault.

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power of issuing warrants, summons, and subpœnas through the police. The system is said to work well, and to give satisfaction to the people; while the commission is valued by those who hold it, especially the natives, as a social distinction which they would not willingly sacrifice by the abuse of any power which it gives them.

38. I am strongly disposed to think that a similar system might safely, and with great advantage, be adopted in the interior of India, and that in Bengal especially, where so many persons, both European and native, of wealth, influence, and intelligence are to be found, there are peculiar reasons, not only as relating exclusively to the administration of police and criminal justice, but of a wider political character, which render it advisable that an attempt should be made to enlist their services in the cause of order and good government. I should be disposed to authorise the Lieutenant-Governor to vest with the powers of an assistant magistrate, under Act No. XV. of 1843, scarcely equivalent to those of a justice of the peace under the English law, any persons of respectability whom he may consider fit to be entrusted with such power. Persons so empowered would be competent to receive complaints in all except heinous offences, including affray, to issue summons, warrants, and subpœnas, to take evidence, to punish up to fifteen days' imprisonment, and 50 rupees fine; and in cases of theft with one month's further imprisonment, in lieu of stripes, and to refer to the magistrate, or deputy magistrate, for final orders, cases requiring a severer measure of punishment, It is difficult to conceive that powers like these would be abused, except in very rare instances, by the persons whom the Lieutenant-Governor would select to exercise them. Even in the absence of a higher principle, the fear of losing a marked social distinction, and the influence which accompanies it, would prevent such a result; and the benefit which a judicious exercise of such power would be certain to confer on the public, seems to me to demand an early trial of the experiment. We know that, as it is, a quasi-magisterial power is assumed by many zemindars and planters; that, although not recognised by the law or the Government, it is acquiesced in by those around them, and that, upon the whole, advantage results from it. I should consider it a great gain if the Government should be able to obtain the open and active co-operation of the best men of those classes for the furtherance of justice and the maintenance of order. To the public the gain would be, that justice would be brought nearer to every man's door than can otherwise be the case; and to a government it can never be a matter of indifference to enlist amongst its officers and coadjutors the most intelligent, wealthy, and independent members of the community. I would try the experiment, and I would not be discouraged if here and there the trust should not be satisfactorily discharged, or even should be abused.

39. In the 16th paragraph of their despatch the Honourable Court observe, that they "think it desirable that an enactment should be passed, vesting in the magistrate or superintendent of police the power of summarily inflicting severe punishment on policemen in proved cases of delinquency, and that the Local Government should be invariably apprised of instances of their intelligence and integrity, and be prompt and liberal in rewarding such conduct."

40. So far as Bengal is concerned, the law as it stands enables a magistrate to inflict summary punishment on police officers convicted of delinquency of any kind, and the Local Government has the means, which it frequently exercises, of rewarding deserving police officers, either by promotion to the higher grades of the service or by special rewards.

41. To recapitulate, my proposals are:—

First.—That the police of Bengal be reorganised at once without waiting for a plan applicable to the whole of India.

Second.—That there be no general superintendent of police for Bengal, but that the police be superintended, as at present, by the commissioners of divisions acting under the general control of the Government.

Third.—That the police of Bengal be not organised after a military fashion, but that two or perhaps three additional corps of station guards be formed, to protect the offices, jails, and treasuries, to furnish escorts, and to aid the regular police in case of need.

Fourth.—That the salaries of the mohurirs, jemadars, and burkundauzes be raised,

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raised, as proposed by the Lieutenant-Governor, at an annual additional expense of 3,38,609 rupees.

Fifth.—That special salaries be assigned to deserving darogahs, at a maximum annual cost of 30,000 rupees.

Sixth.—That either covenanted officers, or uncovenanted deputy magistrates, be placed in charge of subdivisions consisting of from three to four thannahs each, and that 90 members be added to the subordinate executive service at an increased annual expense of 4,12,800 rupees.

Seventh.—That the offices of magistrate and collector where now disunited in Bengal should be combined in the same person, and that such of the covenanted officers as are now magistrates and are not absorbed in the higher office, should be employed as joint magistrates and deputy collectors, but without any increase of salary.

Eighth.—That the joint magistrate in each district should ordinarily have the superintendence of the police under the general control of the magistrate.

Ninth.—That the deputy magistrates exercise judicial as well as police powers.

Tenth.—That the moonsiffs generally be vested with the criminal powers of an assistant magistrate, and with such higher powers as the Local Government may think proper to confer in particular cases.

Eleventh.—That the proceedings of the subordinate courts be made as summary as possible, and that there be no appeal of right.

Twelfth.—That the local government be authorised to vest respectable residents of the interior with the powers of an assistant magistrate.

I was in hopes that the chief part of these reforms might be carried into effect in anticipation of the sanction of the home authorities, but considering the large increase of expense involved, and the terms of the Honourable Court's recent despatch, it will be better that the subject be referred home with our strong recommendation for the issue of early orders. The only exception to this is the reunion of the office of magistrate and collector, which involves no increase of expense, and is in accordance with the views of the Honourable Court. This change, if the Council should so determine, may be carried out at once.

Canning.

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Minutes by the Hon. J. A. Dorin and Major-General the Hon. J. Low.
21 Feb. 1857.

MINUTES by the Honourable *J. A. Dorin* and Major-General the Honourable *J. Low.*

Improvement of the Police in the Bengal Provinces.

I AM prepared to assent generally to all the proposals set forth in the Minute of the Right honourable the Governor-General, and more especially do I concur as to the expediency of the measures suggested in the fourth, sixth, eleventh, and twelfth of them.

It is utterly hopeless to look for a good police, unless you pay the members of it at a rate to ensure honesty, and place them under efficient supervision and control; the expense of doing so is undoubtedly heavy, but it is an expense that must necessarily be incurred, if security of life and property is worth having, and is to be maintained.

I would most earnestly recommend the measure of enlisting the co-operation of respectable landholders and residents in the mofussil in the cause of order and good government, by entrusting them with limited magisterial powers. The measure may possibly fail, and it is not improbable that, in some instances, the power may be abused; but I think it is of such infinite importance to attempt to bring justice nearer than it has ever been yet to the masses of the people, and this seems to me such a reasonable method of doing so, that I would persevere in the trial of the plan at almost any hazard.

I quite agree as to the propriety of making the proceedings of the subordinate courts in petty criminal jurisdiction as summary as possible, and of preventing

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appeals, which are the bane of our judicial system. No officer, however conscientious, will do his best, if he knows that his decisions are to be open to endless appeal; the greater the responsibility, the better chance is there of substantial justice.

I somewhat question whether less than three additional police battalions will be sufficient for the wants of the Bengal provinces; and I think it would be useful if a military organisation were so far given to them, that they should not be always stationary at the same places, but be liable to relief at moderate intervals of time. I believe that the local connexions and prejudices formed and created by long residence in the same spot are highly prejudicial to efficiency. In this case I think there should be one general superintendent, not of police, but of police corps.

The union of the offices of collector and magistrate in one person is, I have little doubt, wrong in theory, but I believe it will work better in practice than any other plan that can be afforded at present, and I recommend that it be carried into effect without further delay.

21 February 1857. (signed) *J. A. Dorin.*

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23 Feb. 1857.

I have carefully perused these interesting papers; I do not see any necessity for there being "one general superintendent, not of police, but of police corps;" but, with that single exception, I fully concur in all the sentiments and remarks recorded in the above Minute by my honourable colleague, Mr. Dorin.

23 February 1857. (signed) *J. Low.*

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— No. 18. —

Minute by the Honourable *J. P. Grant.*

Bengal Police.

9 April 1857.

1. I PROPOSE to discuss the several points raised in the papers before us, in the order in which they are treated in the Minute of the Right Honourable the Governor-General.

2. *Separate Treatment of this Matter.*—I agree most fully with his Lordship in thinking that the question of improving the police of Bengal should not be delayed for the purpose of introducing one uniform scheme of reform at all the Presidencies. To mature such a uniform and general scheme, assuming the expediency of establishing such uniformity, must be the work of a very considerable time; whilst the weakness and defects of the Bengal police are too notorious; the interests at stake in this the most important division of the empire are too great; and the contrast between the provision made for the police of other more favoured but less important provinces, and that made for the police of Bengal, is too glaring, to warrant any avoidable delay. Delay is not unavoidable, because the evil can be remedied, for present purposes, without reference to the systems, present or prospective, of the other Presidencies. Whether, therefore, it be decided that a uniform system should be eventually introduced all over India, or that each Presidency, and each division of a Presidency, should have such a system as may be thought best for itself (on which question I am not in a position to form an opinion at present), I earnestly hope that we may be immediately authorised to do what is pressingly required for Bengal.

3. This will not stand in the way of any more general and uniform reform at any future time. For what is it that is most pressingly required for Bengal? Many projects, more or less differing from each other, are proposed by way of reform; but there is one foundation on which they are all built, and in respect to the necessity of which all are agreed, namely, a largely increased expenditure upon the native police—such an expenditure at the very least as will raise the expenditure upon this department of administration in Bengal so as to approach

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to what is due to the population, the wealth, and the taxation of this part of the empire; such an expenditure at the very least as will give Bengal a police which, in mere physical strength, is not palpably inadequate. I take the liberty of appending to this paper a copy of a Minute I recorded in another department, under date the 27th of November 1854, which bears so directly upon the present point, that its reintroduction here will save the repetition of an old argument in new words. If an additional expenditure upon the native police of Bengal of all grades, to the amount of some fifteen lacs of rupees a year, is allowed, no matter upon what system the additional force is organised, we cannot fail to do great good. If this expenditure of money is not allowed, no change of system will avail.

4. *A general Superintendent of Police for the whole Bengal Presidency.*—On this point I agree thoroughly with the Governor-General, for the reasons assigned by his Lordship. It seems to me that the divisional system is the best system now in force in India. Under this system the local administration in all executive departments of what may be called a small province of manageable extent, consisting of five or six districts, is (or should be) entrusted to a single officer of mark and experience, as commissioner; and the general superintendence of the police of his division seems to me an essential part of the business of such an officer, without which the object of the system is not attained.

5. *The Constitution of the Bengal Police Force.*—I agree generally in his Lordship's remarks respecting military police. I would adopt, however, in Bengal exactly the Punjab system of police corps, converting, as is proposed, the Behar Station Guards (which body I am inclined to think partakes too little of the military character), the Hill Rangers (which body being now purely military must partake too much of that character), and the new levy of Punjabees, into police battalions formed on the Punjab model. I do not see why the Calcutta militia should not undergo the same conversion; it seems to me that a third class of corps between the class of civil and the class of military corps is unnecessary. I feel doubtful whether two additional police corps, as proposed, would quite suffice to protect Bengal as it should be protected, considering the remarkably small number of regular troops which are now or hereafter are likely to be cantoned within its limits. I fear one corps at Dacca will be an insufficient provision for Eastern Bengal. The Sontal side of Bengal is now amply provided for. There is no reason to suppose that because the last outbreak was there, the next will be there also. I look upon the Sontal Pergunnahs as quieted for ever; but I regard the Ferazy population of Eastern Bengal, filling extensive and populous districts now wholly unprotected, as a source of very serious danger, though a danger which requires only the securities provided in every part of India except Bengal, in order to be fully guarded against.

6. I am also doubtful how far we can fairly lay claim to the pay of burkundauzes now employed as jail and treasury guards, as a partial set-off against the cost of the new police battalions. For whatever number of men, whether men of a police battalion or burkundauzes, are employed as jail and treasury guards, that number will be wholly useless for the purposes for which the new police corps are wanted. When, therefore, I speak of the number of new police corps that will be required, I mean corps of such strength as will afford enough movable men, over and above such immovable guards as may be supplied by them.

7. What is at present our disgrace and our danger in Bengal is, not merely that our police burkundauzes are infinitely too few in number to keep the peace among 40 millions of souls, but that the *morale* of the policemen we have is such that they won't fight, even when in sufficient numerical strength at any spot. They are wholly useless, not only in such a grave affair as the Sontal insurrection, but in the common affrays that occur constantly in Bengal. They cannot face the professional lattials. There are numerous cases of European civil officers, with large guards of burkundauzes, put to the rout by rioters less formidable than the professional lattials. It is, in my opinion, not enough that there shall be, as is proposed, at every head-station of a district a body of men to be relied on, who can be sent in force to any part of the district where a formidable rising may take place. Such a body of men at the head-station would be of great occasional use, and would tend to give a general sense of security to the whole district; but we want also other men of the same sort for every day use. For this purpose,

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there must be, I think, if not at every thannah, at least in every small circle of thannahs, a body of men who can be relied on when opposed by such classes as our lattials and dacoits are composed of; and who shall ever be at hand to suppress or prevent the common affrays, and the common acts of force, by which the strong oppress the weak in these provinces. In short, the physical force which every darogah must have at his command, should be a real force, not as now merely a nominal force, which fails him whenever it is wanted for use; and for this purpose, I see nothing for it but to supplant our thannah burkundauzes by semi-military policemen. The detection of crime, I do not doubt, will be best managed by quite a different class of men, whose numbers will be comparatively very few, and whose qualifications must be very different from those required of a sturdy and spirited body of fighting policemen. As a class, I cannot very clearly distinguish these proposed detective policemen from the class to which the present thannah mohurirs belong.

8. I can myself hardly hope that less than three new police battalions will secure Bengal; and whatever number of battalions there may be, I think the strength required for purely police purposes must be provided, over and above the number required as jail and treasury guards. The plan I should prefer would be to have a small separate police corps for every division. This would require for Bengal and Behar several small corps.

9. *District Civil Police.*—I agree with the Right honourable the Governor-General in thinking that the designation of mohurir should be changed to that of naib thannadar, and that these naib thannadars should be classed, and should have their pay raised in the manner and to the full extent recommended by the honourable the Lieutenant-Governor of Bengal. I think also that the proposed classification of the subordinate class called jummadars, is very desirable, and the proposed increase of their pay indispensable.

10. As to the thannah burkundauzes, if they are retained at all, I agree with his Lordship in thinking that five rupees a month are not too much for the lowest class. But my own opinion is that, however much we pay them, these men will be useless; and that unless we replace them by a useful body of men, our intended reform will fail. We require a body of men enlisted on the side of order, who shall be equal in point of courage, and superior in point of discipline and organisation to the professional lattials. These thannah burkundauzes are infinitely inferior to the lattials in all three points. Now, raising their pay might enable us to get men of sufficient courage; it might put the magistrate on a more equal footing in the lattial market with the zemindar and planter than he is on now, but it would do nothing for discipline or organisation. To attain these objects we must have a semi-military body; and as we are to have such a body in the police battalions, I would look to those battalions exclusively for my physical force at the thannah, as well as at the Suddar station. If this use is not made of the proposed police corps, then such corps will be merely what the Calcutta militia are now, which for all common police purposes is not, and was not intended to be, of any use. If this use is made of the proposed corps, then I believe the lattials' occupation will be gone.

11. I am unable to agree with the Lieutenant-Governor in thinking that the thannadars generally are not inadequately paid at present. It appears to me that no increase in the pay of the men under the thannadar will be worth what it must cost, unless the thannadar himself, on whom everything rests, is put upon a respectable footing; raising the pay of the men without raising that of the master, whose pay is already too low, will tend still further to degrade the position of the master. I believe that in thinking the pay of darogahs sufficient, the Lieutenant-Governor is not supported by the general feeling (whether official or unofficial) of the mofussil. However this may be, it seems to me at least certain, that if the proposed increase in the pay of the assistant (the mohurir or naib darogah) is not excessive, the general pay of the responsible head of the office, at its present rate, is by much too small. By the proposed plan, the assistants of the first class will draw 40 rupees a month. Now the pay of the mass of darogahs is only 50 rupees a month; and the average pay of the whole body is only 59-7-9 rupees a month. The distinction of 10 rupees a month between the chief's staff and the chief himself, who is solely responsible in theory for the state of his thannah,

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and who is all in all in practice even more than in theory, appears to me plainly to be quite insufficient.

12. For this reason, and because I agree with the Governor-general in thinking that the proper reward for eminent good service as a darogah is promotion to a higher grade in the department, such as that of deputy-magistrate; instead of allowing 20 special salaries at the enhanced rates of 150 rupees and 200 rupees a month, I strongly recommend that no officer of the class of darogah, being the responsible head of an office, should receive less than 100 rupees a month. That is now the pay of the first class of darogahs; but it is no more than the pay of the lowest class of moonsiffs. The main objects of civil and criminal justice, namely, the protection of honest industry, and the security of life, person, and property, depend more upon the darogah than upon the moonsiff. The temptation, in most parts of Bengal, to which the darogah is exposed, is infinitely greater than that to which the moonsiff is exposed. His duties are much heavier, and, if honestly performed, much more irksome, and much more likely to bring down upon him the vengeance of an influential neighbour, than those of the moonsiff. On no principle do I think it defensible to pay him less than the moonsiff. I shall look upon all the money spent in the contemplated police reform, as to a large extent misspent, if the general position of the darogahs is not raised, as it is proposed to raise the general position of their subordinates. The expense of raising the pay of all darogahs to that of the lower grade of moonsiffs, I believe, would not very greatly exceed two lacs of rupees a year; about the same as the proposed increase of the pay of mohurirs. To this, in my opinion, should be added what is necessary to raise the pay of one-fourth part of the whole body of darogahs to an equality with that of the higher grade of moonsiffs, namely 150 rupees a month.

13. The heaviest item of increase proposed is 4,12,800 rupees for 100 additional deputy-magistrates. I doubt the necessity of going to so large an expense on this account. If the old Indian theory, to me a most unaccountable theory, under which we are prohibited from making use of our lowest class of civil judges for the trial of the smallest and simplest criminal offences, is to be persisted in, so that these deputy-magistrates would be the only petty criminal judges away from the head station in a large district; then I should think, not only that this large item of expense must be incurred, but that to do anything like justice to the people, without harassing them by dragging them to distant courts, in small matters, this item should be doubled or trebled. But even the Lieutenant-Governor does not recommend a continued strict adherence to this remarkable theory. He contemplates the grant of criminal power to certain moonsiffs. He would not, indeed, grant such powers to all, generally; he would make such grant in each instance a special case, as I understand him, regulating himself by reference, not to what the local want of a petty criminal judge may be, but to what the personal character of the judge may be. However imperfect, as a provision for the wants of a district this scheme would be, it may still be taken as an admission on the part of his Honor, that there is nothing in the nature of things in India to prevent a petty civil judge being also a petty criminal judge. For my own part, I cannot conceive a man who is fit for the one duty being unfit for the other. The scheme of the Law Commissioners, whose proposed code is now under the consideration of the legislative council, is to give criminal powers to the moonsiffs universally; and I shall be very much surprised if this part of the scheme of those eminent gentlemen has not the unanimous support of the legislative council. Now, if this is so determined, there will be no necessity, so far as the object of bringing petty criminal justice within a moderate distance of every man's door is concerned, for so large and costly an increase of deputy-magistrates as is proposed. It is, indeed, true that the Law Commissioners intend to give only small powers to moonsiffs; in which they agreed with a zillah scheme propounded by me in a minute which is amongst these papers, dated the 23d November 1854.* To provide for cases more important than the very lowest class, I had proposed to use Sudder ameens, who should have had higher criminal powers than moonsiffs will have. The Law Commissioners propose to abolish the class of Sudder ameens; but it would be a small modification

* Paragraph 28.

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cation of their system to give moonsiffs of the first grade higher criminal powers; and then if such moonsiffs were properly distributed in the interior of zillahs, the object would be attained.

14. If 100 additional deputy-magistrates are not wanted as judges, I do not think that so large an increase can be wanted merely as assistant-superintendents of police.

15. If, however, economy does not drive Government to stint the plan of police reform in some other more essential point, in order to find funds for this heavy item, the police will gain by this accession of strength. I am only anxious not to spend 300 rupees or 400 rupees in a circle of thannahs upon a single officer not absolutely necessary, whilst I foresee great difficulty in obtaining what is absolutely necessary for paying the requisite quantity of real physical force, without which no number of deputy-magistrates can defend the circle from the lattials.

16. On the whole, I recommend the suspension of sanction to this part of the present plan until the Code of Criminal Procedure is passed.

17. *Union of Offices of Magistrate and Collector.*—Upon this question, as I have had opportunities of recording my sentiments in full in previous Minutes,* I should have abstained, and gladly abstained, from writing another word now beyond a simple statement of my respectful adherence, after careful reconsideration, to my original opinion, had not something new occurred since I last wrote on the subject, directly bearing on the question at issue, which, in my judgment, imperatively demands the especial attention of the Government of India. The occurrence, or rather the series of occurrences, to which I allude are, the Report of the Madras Torture Commission;† the Resolution of the Madras Government thereupon;‡ and the debate in the House of Lords thereupon.§ The general question, however it may be determined here, will be finally decided at home. In the view I take of it, I should not be doing my duty if I did not, with sincere deference and respect for the better judgments of those who differ from me, submit, for the consideration of those on whom the responsibility of final judgment will rest, the view I take of the bearing of this new matter upon the general question.

18. I do not understand the Honourable Court, in the passage of their recent public Despatch referred to in his Lordship's Minute, to have intended to pronounce a definite judgment on this question. They say that the same objection which exists in the case of native officers does not exist to the combination of magisterial and fiscal powers in the hands of European officers; and this is undeniably true. The objections in the two cases are somewhat different in their nature, and very different indeed in degree. But, nevertheless, in both cases objections more or less important may exist. If I had understood this passage otherwise, I should have considered the question closed and been silent.

19. In my Minute of the 23d of November 1854, I made a remark, which I will take the liberty to repeat in the margin.‖ The inquiry to which I then alluded, resulted in the Report of the Torture Commission above mentioned.

20. There is no longer any question as to the necessity of separating the functions of revenue and those of police and criminal justice, so far as native functionaries

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* Dated 23 November 1854; and 8 May 1855.

† Dated 16 April 1855. ‡ Dated 17 June 1855. § On the 14th of April 1856.

‖ "At this moment, in the Madras provinces, an inquiry is on foot into the truth of a charge that has been made formally in Parliament, to the effect, that in those provinces where magisterial and fiscal powers are in the same hands, the Government revenue is systematically raised by the use of torture, inflicted by the native officers vested with these double powers. I trust that the charge, in the main, will be disproved; but I myself heard, when I was in the south of India, some such stories as would naturally have given rise to the charge. I myself heard, what makes me very glad that the fact is to undergo inquiry. Now no one can deny that, under the Bengal system, no such charge could stand a moment. Every one knows that in Bengal, police, peons, and darogahs, often torture prisoners for police purposes; but no one for the last 70 years has ever suspected that a rupee of revenue was ever raised in Bengal by the help of torture. This is one of the views in which, I submit, the smoothness and silence with which public affairs go on, when all power, in all departments, is centred in the hands of one train of officials, cannot be regarded as good for the people, however agreeable they may be to the administrator."

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functionaries are concerned. This one decisive effect the Torture Report has had upon the European mind universally. So much of the "native system" (at one time lauded beyond measure and without qualification, both in its revenue and its police aspect) has been abandoned by all. The Honourable Court's present Despatch pronounces judgment against it in respect to native officers. That is to say, it is now, by universal consent, pronounced to be insupportable, if its action is intrusted to those who invented it. The Torture Commissioners are in nothing more confident than in this,—that, bad as the system has been as worked under us, it was infinitely worse as worked under native rule. "The native system," then, was an abomination, as is now universally recognised, when worked in the only way its inventors contemplated its working; and, but for the miracle of the country having fallen under the dominion of strangers from a distant Western Island, it must now be admitted that the theory of the propriety of this union of dissimilar functions, as an Indian practical question, would have become hopeless. Therefore, the contention of all the supporters of this union who accept the judgment of the Home Government, as pronounced in this Despatch, must now be narrowed to this position,—that the Mahomedan system, though abominable under the Mahomedans, became, by a wonderful accident, the best possible system for the country they misgoverned, when put into the hands of Englishmen, though confessedly it is a system which is contrary to all English principle and practice, and is disagreeable to the commonplace English mind. And it is further contended, that the fact that Englishmen are in a particular province (Bengal) a numerous and a fast increasing part of the community, forming already one of its most important classes, and promising to become quite its most important class, is no special objection to the adoption of this Mahomedan system in that particular province.

21. Here is a great step gained. The question is very much narrower and very much simpler than it once was. I do not know if the full extent of the decision, that the united functions cannot be intrusted to native hands, has been seen. Not only must revenue and police powers be disjoined in the case of the peons and the tehsildars, the principle of the reform applies as strongly to the deputy-collectors and the deputy-magistrates, who are mostly natives. Yet the functions of these last-mentioned classes of officers are in quality the same as those of collectors and magistrates. A deputy-magistrate of experience has always the full powers of a magistrate. However this difficulty may be treated, I see not how incongruity of system and invidious and offensive class distinctions are avoidable, if the union in European hands is persisted in.

22. What the effect of their inquiry has been upon the minds of the Torture Commissioners on this point cannot be doubted. In an early part of their Report, in explaining the absence of torture within the collectorate of Madras, they lay stress not upon the mere fact that the revenue and police peons are separate in that collectorate, but that "the native revenue servants and police are perfectly distinct bodies, under separate heads and management,—the former under the collector, having no police power whatever as" [he has] "in the provinces, the latter being entirely under the control of the chief magistrate, who is also superintendent of police;" consequently "the revenue officers here are in fear of the police authorities." Every officer of Indian experience will understand why the fact of the two classes of native officers being under different European heads, causes in the one class a wholesome fear of the other. A European officer is always the last person to hear of the malpractices of his own native subordinates. The people will complain to any one else, but it is hard to induce them to complain to a chief of the conduct of those under that chief's orders. A European will hear plenty of evil of the conduct of native officers over whom he has no control; but he will hear little against those who serve him, or serve under him; and what little he does hear will be probably in the shape of charges which, in the manner and form alleged, are false. It is immaterial to the present question whose fault this is; it is the fact alone which is material to our present purpose, and no one will question the fact.

23. It is hardly necessary to cite proof of a fact so notorious. But the ready manner in which the people came great distances in numbers to make their complaints to the Torture Commissioners, as soon as they heard of the object of the appointment of that body, contrasted with the extreme paucity of complaints on

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the same subject made to the local officers, whose regular and constant duty it is to hear them, is in itself remarkable evidence of the effect which the disconnexion of the officer, who is to hear a complaint, with the department complained against has upon the native mind. "I did not complain," says one witness; "it must be by the collectors' orders that the tehsildars perpetrate such cruelties."* Others say, "I did not complain, as it is not usual for such complaint to be listened to;"† and "I did not complain to the collector—what is the use of a poor man like me complaining?"—and "I did not complain to the gentlemen; for who will hear?" Yet the same people travelled great distances to make, as volunteers, the same complaint to "the gentlemen" the moment they heard of gentlemen open to such complaints, and officially disconnected with the native officers against whose abuses of power they had to complain. The truth is, as the Torture Commissioners have explained to the world, and as every intelligent Indian officer has known since his first assistantship, that it is the banded body of omlah, belonging to the department with which he is concerned, that a native complainant is afraid of; and that all omlah under one head, whatever may be their respective designations, are one band.

24. A remarkable example of the effect of this unnatural union of functions was disclosed only the other day in the Legislative Council, in connexion with a matter which was under my own charge. I had introduced a bill to get rid, in the Bengal Presidency, of the system of the unnecessary impressment of carriage for troops marching. They had formerly had, at Madras, a regulation precisely the same as the Bengal impressment regulation which it was my object to get rid of; but Sir Thomas Munro's Government had repealed it, on the ground that it was the cause of grievous oppression; and that it was unnecessary, because, by proper commissariat management, carriage could be procured for Government in the same way as private parties obtain it, when they want it; that is, by previous arrangement, and by paying the price of what they want. But in the course of discussion, what I knew very well long ago was fairly admitted by Mr. Elliot, the Madras member of the Council; namely, that impressment is practised to this day at Madras, contrary to law, with all the abuses which Sir Thomas Munro had forcibly exposed, exactly as if the whole law authorising the practice had remained in force. The explanation of this is, that Sir Thomas Munro died soon after the repeal of the regulation which he had condemned; that the commissariat arrangements he would have carried out have never been taken in hand by his successors; and that the collector-magistrates, by reason of their double power, are practically above all law. Now, it is only under a system by which the functions of the collector and those of the magistrate are united in the hands of one man, that this habitual and universal breach of law could have continued unchecked for so many years. For it is the collector who breaks the law by seizing carriage; and it is the same gentleman, in his magisterial phase, whose duty it is to release the carriage, to restore it to its owner, and to punish the offence of unlawful seizure. None but the offender has any power of dealing with the offence.

25. The Torture Commissioners' Report gives a cruel case of this very kind; a case which bears truth upon its face.‡ Thousands, strictly speaking, thousands of such cases occur annually in every army division when regiments march. The same report shows how labour is forced; and property, without payment, is taken for revenue works§ by collector-magistrates. Whenever such cases occur, the person who offends, or is charged with offending, in one capacity, is the person to whom alone, in another capacity, this union system gravely professes to look for the due inquiry into the fact, and the due infliction of the penalty of the law. How just was Mr. Fullerton's observation, that "the exclusive privilege of receiving criminal charges carries with it a power not less dangerous than that of inflicting punishment, namely, a power to exempt individuals from the penalties of the law."‖

26. I freely admit that, so far as the officer's own acts and omissions are concerned, the evil of the combination in the hands of a high European officer is very

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* Report, p. 28. † Report, pp. 25, 26, 27.
‡ Appendix (F.) No. 30. § Appendix (F.) No. 29. ‖ Cited in the Torture Report, p. 69.

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very much less in degree than when in the hands of a native. But my argument is that the main part of the evil is not in the effect of the combination upon the European officer's own acts, but in its indirect effect upon both the classes of native officers under him, and upon the minds of the natives of his district. Yet even so far as the European officer's own acts and omissions are concerned, I cannot admit that the evil is so small in degree as to be otherwise than material. I wish I could make this admission; but I cannot do so with truth. I cannot rise from a perusal of the Torture Report, without feeling that there has been a degree of blindness, slowness, dulness, and inaction in the Madras collector-magistrates in relation to the practice of realising revenue by torture, which certainly so many active and intelligent gentlemen would not have shown, if the torturers had been private persons, and the object had been something in which those collector-magistrates had no official interest. I say this with sorrow; and I make allowance for the false position in which these officers are placed. But taking the view I do of the fact, I should be unpardonable if I did not do all in my power to relieve them from this false position, and to oppose with all my strength the extension of the system which, in their case, has had such lamentable consequences.

27. From their resolution upon the report of the Commissioners, we find that the Madras Government are deeply sensible of the importance of this question; they feel the difficulty of making so great a change of system as the sudden separation of the collector's and magistrate's functions would involve; but they state that the subject has been for some time under consideration, and that no half-measures will answer. I think I cannot be wrong in inferring from what is upon record, that the wish of the Madras Government is for the separation. It is, at least, certain that the Madras Government, in spite of the difficulty of a fundamental change of system, are so impressed with the disadvantages of the union of these functions, as to be anxiously considering the propriety of incurring all that difficulty in order to escape these disadvantages. Now, with deference, I must say, that I think it would appear to the public a capricious proceeding for us in Bengal, driven by no necessity, and pressed by no serious inconvenience, to undergo the certain evil of change for the sake of the theoretical advantages which some of us anticipate from a particular union of functions here; whilst the Madras Government at the very same moment, pressed by the experienced ill-consequences of that same union there, and smarting under the discredit which those ill-consequences have brought upon their administration, are anxiously pondering the proposal to undergo the certain evils of change, for the sake of a separation of those same functions. I look upon this as an argument to be maturely considered, even by those who differ from me on the theoretical and abstract merits of the question, before determining to take a step here, which cannot fail to appear like a prejudgment of the question that Lord Harris's Government has at this moment before it.

28. I now come to the third occurrence to which I have above alluded, namely, the debate in the House of Lords on the 14th of April 1856, when certain resolutions were moved, and with some little modification, were carried unanimously, concerning torture in Madras. As some of her Majesty's Ministers took part in that debate, not merely expressing their opinions as individuals, but also, as I understand it, holding out expectations on the part of Her Majesty's Administration in this very matter, I think the Government of India will act prudently if it take no decided action in the matter, without respectful advertence to what passed on that occasion.

29. I have the volume of Hansard, containing that debate, now open before me. I find that the union of the powers of magistrate with those of collector was strongly animadverted upon by several of the speakers, as one of the causes of the prevalence at Madras of torture for the realisation of revenue; and that this union was defended by none. I may fairly rely on the tenour of the speeches of the noble lords who spoke on that occasion, as showing how the highest English feeling regards the question I am discussing; and as an argument to be weighed even by those who take a different view from mine on the abstract question.

30. I believe that I shall not be wrong in quoting here some expressions of Lord Ellenborough's, by way of supporting my argument by the high authority

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of a former Governor-General of India. His Lordship said;* "I rejoice that the noble duke (the Duke of Argyll) has stated it to be his opinion, and, as I understand, that of Her Majesty's Government, that it was absolutely essential to separate the functions of the police from the collection of the revenue. I have always been of opinion that the police and the revenue should be in different hands; but the noble duke will find, and the Government here will find, more practical difficulty in carrying that separation into effect than they expect, and unless the greatest resolution is shown by the authorities here, you may depend upon it failure will ensue. I say this with the more confidence, because this was the only subject on which I and my council did not agree. I never could get them to adopt the view which I always entertained as to the necessity of separating the police from the revenue department." I cannot refrain from supporting another point in my argument by the same high authority. His Lordship said, † "There is nothing more dangerous or improper in the state of India than the connexion between the persons in the police and the persons who were generally understood to have the ear of the collector. It leads to the keeping back of complaints which ought to be made, and to the defeat of justice when complaints are made." It is obvious that, whilst one man is chief of the police and criminal judge in his capacity of magistrate, and chief of the native revenue servants in his capacity of collector, the greatest possible facility is given to that connexion to which Lord Ellenborough objects.

31. The first of the above extracts from Lord Ellenborough's speech will show what one of Her Majesty's Ministers was understood to have said, and to have said on the part of Her Majesty's Government, on the present question.

32. Now, what I very respectfully submit for consideration, with advertence to this debate, is this: If, notwithstanding the earnest endeavours of Lord Harris's Government, that separation of offices in Madras which has been held out as in prospect should not be achieved, because of some difficulties which cannot in the case of that presidency be got over, there would be even in this event great disappointment amongst those who interest themselves in Indian affairs at home. I am myself sure that no insurmountable, and, indeed, that no important difficulty in the way of the contemplated separation, will be found to exist at Madras; and I feel confident that Lord Harris's Government will propose the separation. If, however, I should be mistaken on this point, as no expectation has been held out of anything beyond a sincere attempt to make, if practicable, an unobjectionable change of system at Madras, which shall include the separation, no feelings beyond disappointment might be aroused. But if, whilst a measure of fundamental change involving this separation of offices is thus pending at Madras, the Government of India, itself divided in opinion as it is upon the abstract merits of the question, goes out of its way to make a fundamental change involving the union of these same offices in Bengal, where they are now separated; and where they were separated not twenty years ago, in consequence of the strong and unanimous recommendation of a Committee of distinguished and experienced officers, who carefully inquired into the working of the union, and with the concurrence of all practical mofussil men in and out of the service pronounced against it; then I think feelings beyond those of mere disappointment very likely to be raised.

33. I respectfully ask if the proposed decision of the question in Bengal is intended to operate as prejudging the same question in Madras? If this be the intention, I ask if the Government of India will not be in an awkward position, should Lord Harris's Government, as I believe it will, come up to us with a simple and unobjectionable project, based on general principles, for the separation of these offices at Madras, a week after we, on general principles, have united them in Bengal? In this case we must reject the project on the ground that we have prejudged the question. If this be not the intention, I ask if the Government of India will not be in an awkward position, should Lord Harris's Government come up in the same manner, driving us, a week after we have united the offices in Bengal, to separate them in Madras?

34. On

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* See p. 989.

† See p. 991.

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34. On the one hand, after all that has occurred at Madras and at home, I cannot see how the Government of India could dare to refuse the separation at Madras, if the Madras Government should demand it; on the other hand, I do not see how any such case, or any fair show of such a case of difference of circumstances can be set up, as would justify a simultaneous and contrary action at the two presidencies.

35. It is quite true, that, under the Bengal revenue system, revenue officers have not so much temptation to extract payment of revenue by unlawful means, as they have under the Madras system. But it is equally true that rent is every day extorted in Bengal by unlawful means; and rent is the mother of revenue. I should think it a very hard task to convince an English politician, that although the fact of ryots being tortured with impunity in order to extract payment from them has proved the necessity of disjoining the functions of police and criminal justice from those of the collector of revenue, where the ryot pays directly to the public treasury, the same fact does not make it undesirable to unite the same functions, where the ryot's money reaches the treasury through a middleman.

36. The natives have been torturing each other for three thousand years, just as they have been poisoning each other for the same period. When we are blamed because of the existence of these criminal habits, we are blamed foolishly and unjustly. We cannot justly be blamed, in a moral point of view, if we use every means in our power to bring these crimes to light, and to punish them, when they occur. And we cannot justly be blamed, in a political point of view, if we take all becoming pains to show the world that we are sincere in our abhorrence of these crimes, and in our endeavours to check them. In my view of the requirements of police and criminal justice* (and I view these matters as the mass views them, having no Indian or other theories to gratify), we do not justly escape blame, either in a moral or in a political point of view, so long as we confound police and criminal justice with the fiscal department of administration, subordinating, at least to all outward appearance, the former to the latter.

37. But if the Bengal revenue system is still thought a material distinction in favour of the union in Bengal, as a specialty, I would ask if Bengal has no specialties to be weighed in the opposite scale, in its thick population, its great general wealth, its high value of land, its large number of native nobility and gentry, each possessing immense wealth and power, its large number of European residents, planters, and traders, its vast internal and external commerce, with all the complicated transactions of its people, arrived at a stage of progress which, if it has not all the moral, has all the immoral qualities of the highest state of civilisation? Beyond all question, the union will be very distasteful to all those important interests, the existence of which in great strength forms the distinctive feature of Bengal.

38. The system whereby various functions, each of which is separate in other well-administered countries, are sometimes united in India, is represented in its most amiable view when it is called patriarchal. It is suitable and convenient as a temporary expedient in a new acquisition; and it is a necessary expedient in a poor and ill-peopled province of great geographical extent. It is a very silent system, and goes on with little trouble to rulers, so long as the remembrance of the ancient misrule lasts, and so long as few Europeans, or others who have been accustomed to a regular government, fall under its operation. It is a great favourite with those whose administration is known to the public only by their own reports of it. But it has its long undiscovered abuses and its sudden explosions; witness the Madras Torture Commission. Without, however, questioning the system, where it is appropriate, I ask if such a country as I have above described Bengal to be, is a fit country for a patriarchal experiment? For this system two parties are required: the sage and paternal ruler of a district and the dutiful family of subjects. Not to speak of the first requisite, I may safely deny that Bengal affords the last. One has only to read a native or English newspaper

* As a criminal judge, a magistrate's power extends to sentences of imprisonment with hard labour for three years.

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newspaper with a mofussil circulation, to see that those for whom such mental food is provided have no filial regard for Government officers. They are past the patriarchial epoch. What they ask for are good laws, well administered by as many functionaries as the country can fairly claim with reference to its general circumstances, and the taxes it pays. These classes want nothing from Government more paternal than this; less than this they will not accept, and all this they have a right to have. My mature conviction is, that they never can have this, unless incongruous functions are kept in separate hands, and every functionary is required to mind his own proper business.

39. On this whole question my strong opinion is that the Government of India ought not to pronounce in favour of the proposed union, until the same question comes up from Madras, and that even then it ought to take no step towards effecting such a union without a previous reference on the whole subject to the Honourable Court.

40. I have now recorded all I have to say on the general question; and I much regret that I have been unable to deal with the subject more briefly. As a point of mere detail, I have to call attention to the circumstance that there will not be money enough available to afford the collector-magistrate a subordinate officer as joint magistrate, as is proposed. A Bengal collector draws 23,000 rupees a year, and a Bengal magistrate draws 10,800 rupees a year, making together 33,800 rupees a year. From this aggregate sum deducting 27,000 rupees a year, the proposed salary of the collector-magistrate, there remains only 6,800 rupees, which would be inadequate for such an officer as is contemplated in the capacity of joint magistrate. These officers in the North-western Provinces draw 12,000 rupees a year. Nor can any general reductions of salary that may be made in consequence of Mr. Rickett's Commission be drawn upon for the difference; because such reductions would take full effect if things remained as they are; and a re-arrangement of things, which would prevent their having full effect, would be equivalent to an increase of expenditure. The plan I have ventured to propose in a former Minute, whereby the salaries of magistrates and collectors in Bengal would be equalised, and the number of the former reduced, has this advantage of detail, that it would be a saving of expense, independent of any general reduction that may result from Mr. Rickett's Commission.

41. Another point of detail to which I may call attention is, that, by the plan now proposed, all the joint magistrates who are to have the immediate control of the police (a duty requiring experience as much at least as the other duties of a magistrate) will be as young as the magistrates now are; for I suppose that the plan contemplates having joint magistrates wherever there is now a magistrate or an independent joint magistrate and deputy collector. The ground on which the Honourable the Lieutenant-Governor presses the union is the expediency of remedying the present evil of having very young men acting as magistrates. This is an abnormal state of things, arising partly from an unusual run of rapid promotion lately, but chiefly from the omission of the home authorities for many years past to supply more young men than formerly at the bottom of the service, in proportion to the increased number of higher offices which late accessions of territory have rendered necessary. These two causes are now both at an end, and in a few years the evil would be remedied in the natural course of things. In the meantime, however, it must be admitted to exist to an inconvenient degree. The plan now proposed will not remedy it, so far as the immediate control of the district police is concerned. The plan I ventured to propose before, as it would have reduced the number of magistrates to an equality with the number of zillah courts, would have had the advantage of increasing the experience of the youngest officer in immediate charge of the district police by three years or so, whilst it would have considerably more than doubled the average experience of magistrates; and it would have made the standing of the oldest magistrate exactly what it will be under the system of collector-magistrates now proposed.

42. *Union of the Functions of Superintendent of Police with those of a Criminal Judge.*—This, as a question of criminal procedure, is so peculiarly a subject for discussion in this Council in its larger form, when reinforced by the learning and local experience of its legislative members, that it is not necessary for me

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me to discuss it here. It will come up for discussion, in connexion with the new codes; I will, therefore, here indicate my views upon it very shortly. The one point for decision, as it appears to me, on which alone the whole question turns, is this, in which way is crime more certainly discovered, proved, and punished, and innocence more certainly protected: when two men are occupied, each as thief-catcher, prosecutor, and judge, or when one of them is occupied as thief-catcher and prosecutor, and the other as judge? I have no doubt that the principle of the division of labour has all its general advantages, and an immense preponderance of special and peculiar advantages, when applied to this particular case; and I have no doubt that if there is any real difference between India and Europe, in relation to this question, the difference is all in favour of relieving the judge in India from all connexion with the detective officer and prosecutor. The judicial ermine is, in my judgment, out of place in the by-ways of the detective policeman, in any country, and those by-ways in India are unusually dirty.

43. Indeed, so strongly does this feeling operate, perhaps unconsciously, upon the English minds of the honourable body of men from whom our magistrates are chosen, that in practice the real evil of the combination is, not that a judge, whose mind has been put out of balance by his antecedents in relation to the prisoner, tries that prisoner, but that the superintendent of police, whose nerve and honesty are indispensable to the keeping of the native police officers in order, abandons all real concern with the detection of crime and the prosecution of criminals, in the mass of cases, and leaves this important and delicate duty almost wholly, in fact, to the native darogahs. He does this instinctively, because he knows that he will have to sit on these cases as judge, and he feels that he cannot, with satisfaction to his own conscience, or even with outward decency, take an active share in both of his mutually repugnant duties.

44. If the combination theory were acted upon in reality,—if an officer, after bribing spies, endeavouring to corrupt accomplices, laying himself out to hear what every tell-tale has to say, and putting his wit to the utmost stretch, for weeks perhaps, in order to beat his adversary in the game of detection, were then to sit down gravely as a judge, and were to profess to try dispassionately, upon the evidence given in court, the question of whether he or his adversary had won the game, I am well convinced that one or two cases of this sort would excite so much indignation as would save me the necessity of all argument *à priori* against the combination theory. The real question is, not whether respectable European superintendents of detective police shall also be high criminal judges, with powers to try all but the most heinous cases, but whether you will have any respectable European superintendent at all effectively at the head of your detective police. The consequences of there being now no real check of a Europeon superior over the darogah in the detection of crime, and in the getting up of cases, are deplorable. The Lieutenant-Governor of Bengal appears to me to be less than just to our higher criminal courts, in the blame he casts upon them. There seems to me to be something inconsistent, after the stress laid on the youth of the magistrates, and the necessity of a change of system in order to substitute more experienced men, in supposing, when these youths and very much more experienced men differ, the youths to be generally in the right. It is the duty of judges to acquit all prisoners whose guilt is not proved, and this duty they perform without fear of man. That justice labours under heavy disadvantage, in a country where in many cases no quantity of mere swearing will in itself carry conviction to a sensible mind, is manifest. If, after making due allowance for this disadvantage, it is found still that crime too frequently escapes punishment, surely the remedy is not to complain of cool and disinterested men, who, upon their judicial oaths, acquit whenever they find no proof of guilt, but to apply ourselves to the root of the evil by doing what we can to stimulate the active pursuit of offenders, and to check false prosecutions, and, what is perhaps equally common, the getting up of false evidence against real criminals.

45. The Lieutenant-Governor's objections to this division of business, after the best attention I can give them, seem to me to be founded on imaginary evils. His Honor anticipates such extreme antagonism between the native police officer and the native judge as would be materially inconvenient. Under a

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moderately sensible European magistrate, controlled by an intelligent commissioner, who would not talk or act as if police peons and darogahs were infallible, and dispassionate judges were never right, I cannot see why there should be any such consequences. At any rate, if this be a valid objection, it is an objection to giving criminal powers to any moonsiff; but this deduction is inconsistent with the views of the Lieutenant-Governor himself, who would not refuse all moonsiffs criminal powers.

46. *Appointment of Public Prosecutors.*—This is a point not noticed in the papers before us, but it is intimately connected with the last question. Sir Arthur Buller mooted this subject the other day in one of our legislative sittings, when the code of criminal procedure was under discussion, and I believe his suggestion has met with general approval. I am myself convinced that the appointment of European officers to manage the prosecution of important criminal cases is indispensable to the success of any reform in our criminal procedure. The whole scheme of the penal code of the Indian Law Commissioners rests, avowedly, on the assumption that there will be a public prosecutor. I do not believe that code to be workable otherwise. The plan which I have before proposed provided for this duty, without additional expense to the State, by entrusting it to the magistrate, and his deputies and assistants. Under the plan now proposed, as well as under the existing system, either this great want must be left unsupplied, or a considerable additional expense must be incurred to provide for it. And even if the money is no obstacle, I do not know where the men are to be found.

47. *Vesting private Gentlemen with the powers of a Magistrate's Assistant.*—For the purpose of receiving complaints, or issuing warrants, or sending up prisoners to a criminal court, the powers of our darogahs are sufficient. The Ceylon system, simply, would be therefore inapplicable in Bengal. As petty criminal judges, these special assistants would have effectual powers, similar to, but less than those of a moonsiff under the new code. I see no objection to the proposed experiment.

48. *Conclusion.*—In conclusion, and by way of a summary of my recommendations, I will observe that the improvement of the quality and the large increase of the strength of our district policemen; also the augmentation of the pay of our district police officers of all grades; appear to me indispensable reforms, which it concerns the character of the British Government to introduce in Bengal forthwith. As these reforms would interfere with no ulterior arrangements that may be introduced, and as we know the general feeling of the Honourable Court to be in favour of very material reforms, all in this direction, as being, in the present state of the country, indispensable though costly measures; I should have gladly joined in a large measure of immediate progress, in secure anticipation of the approval of the Home Government. As it is, I respectfully concur in the proposed recommendation on these points to the Honourable Court. All the questions relating to judicial procedure discussed in the papers before us, must be considered of course in the Legislative Council, in connexion with the new codes prepared by the Law Commissioners in England. As to the question of creating collector-magistrates, which also is not wholly unconnected with the general question of criminal procedure, I am myself against the union, on general principles; and irrespectively of all opinions on the question generally, I think that no decisive step should be taken in relation to it, until we have before us the decision of the Madras Government on the same subject-matter; and even then that the union should not be carried into effect without the special instructions of the Home Government. I adhere to my original project of zillah administration, which, though it has yet found no favour, and is, I doubt, very open to improvement, I cannot help regarding as a project which promises to avoid all the experienced evils of our present system, without any unnecessary organic changes. By way of summary, I note here the zillah establishment as it would be under that project:—

Covenanted—European.

A zillah judge, with civil and criminal powers as at present.

A collector, having no functions other than those in the revenue department as at present, but on a reduced average salary.

A magistrate, having, as at present, no functions in the revenue department,

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ment, and having no judicial powers, but being chief of the police of the zillah, public prosecutor in heinous cases, and superintendent of the prosecution of all criminal cases in the zillah, on an average salary raised to the reduced amount to be fixed for the collector.

Covenanted assistants very much as at present. They should be available for assisting in all departments, as required, viz., in the revenue, civil, criminal, and police departments, and, as a rule, in the course of their training, should pass through all four.

Uncovenanted—Natives chiefly.

Deputy-collectors, with no powers of a deputy-magistrate.

Deputy-magistrates, with no revenue or judicial powers, to be located in the district away from the head station, each having one or more circles of thannahs under him.

Principal Sudder ameens, with both civil and criminal judicial powers, as proposed by the Law Commissioners. Where there is more than one in a zillah, one only to be located at the head station.

Moonsiffs of the first grade, with civil and criminal powers, as proposed by the Law Commissioners, the latter higher than those of a moonsiff of the second grade, to be distributed over the zillah equally, their higher criminal powers extending over their whole circle. Four thannahs, or so, under a moonsiff of the first grade, will form a circle.

Moonsiffs of the second grade, with civil and criminal powers, as proposed by the Law Commissioners, to be stationed throughout the zillah as at present; three moonsiffs, or so, of the first grade, and one of the second grade forming a circle.

Darogahs, as at present, one in each thannah.

Naib darogahs, of whom all but one to be located in charge of subordinate thannahs or pharees.

Jemadars, detective policemen, and native constables under the darogah.

Detachments of police corps under the deputy magistrates and darogahs, of whom at least one not inconsiderable body to be posted in each circle of thannahs.

(signed) *J. P. Grant.*

9 April 1857.

(Copy.)

MINUTE by the Honourable *J. P. Grant.* 27 Nov. 1854.

Punjab Report for 1851–52 *and* 1852–53.

Dated 27 November 1854.

I CORDIALLY agree with all that has been recorded by the Governor-General, in acknowledgment of the services of those officers under whose immediate administration the wonderful results of the first lustrum of our government of the Punjab have been achieved. Of the merits of Mr. John Lawrence, the Chief Commissioner, in connexion with these results, it would be very difficult to speak in terms of exaggeration. At the same time it will not, I think, escape the notice of the public (I am sure it will not escape the notice of the Honourable Court), that all these services could have been of little avail, but for the well-considered and prudent liberality with which the scheme of Punjab administration was originally devised, and has ever since been supported by the Governor-General.

The Punjab has been fortunate in the selection of its workmen; but its peculiar good fortune has consisted in this, that its workmen have not been required to make bricks without straw.

For 19 districts of moderate size, containing a population of something upwards of 10,000,000, 7 police battalions of foot, and 27 troops of mounted police, have been provided, at a cost of about 16½ lacs of rupees a year. Altogether, for the civil duties of this territory, 8½ battalions and 38 troops,

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consisting of 12,000 men in organised bodies, are set apart. Besides these, for the same territory, there are about 10,000 men called detective policemen, maintained at a cost of about 8½ lacs of rupees a year, and all this is besides the old village chowkeydars, or watchmen of the country. Knowing this, I was prepared to hear that the extinction of dacoity, and of all crimes of organised violence, in the central districts of the Punjab, may be pronounced complete.

It is only by comparison that the strength of this police force can be tested. For about 30 very large districts in the Lower Provinces of the Bengal Presidency, containing a population usually estimated at 40,000,000, the number of policemen provided is little more than 8,000, at a cost of 4½ lacs of rupees a year.* To these must be added, in order to show the whole physical strength provided "for the civil duties" of the Lower Provinces, a few hundred men, forming an organised body called the Behar Station Guard (which is a body corresponding with the Punjab police battalions), and probably the several jail and treasury guards who, I suspect, are not included in the return from which I have taken the number, of police burkundauzes in Bengal. Also, allowance must be made for from 3,000 to 4,000 men employed in the Punjab on frontier duty; military, rather than civil. But, all allowances made, the disproportion is enormous.

The leading journal of the world, in a laudatory notice of the first Punjab Report, asked why the rest of India was not equally well governed. That question touches us all. I have never been immediately connected with the government of any other part of India than Bengal; but with the Government of Bengal I have been, as secretary, closely connected. As far as Bengal is concerned, I think I have in the above figures sufficiently indicated what the true answer to that question is. And as the Government of India and the Home Government hold the purse-strings, if comparisons unfavourable to Bengal mast in candour be made, when reading of the astonishing success of the youthful Government of the Punjab (and I, for one, confess that I cannot in candour avoid making such comparisons), I think I have in the above figures sufficiently proved that it would be very unjust to infer, from such comparisons, any comparative inefficiency in the Bengal workment, from its Government downwards, or any comparative inferiority in the law of Bengal, or in the theory or form of its administration.

27 November 1854. (signed) *J. P. Grant.*

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MINUTE by the Honourable *B. Peacock.*

Bengal Police, &c.

Dated 30 April 1857.

I CONCUR entirely with the Right Honourable the Governor-General as to the first proposal made by his Lordship, viz.: "that the police of Bengal be reorganised at once, without waiting for a plan applicable to the whole of India;" also as to the third proposal relative to the organisation of police. I do not think that any great benefit is likely to arise from increasing the pay of the present mohurirs from an average of less than eight rupees a month to an average

	Number.	Cost.		
		Rs.	*a.*	*p.*
* Jummadars - - - -	670	62,633	8	–
Burkundauzes - - - -	7,601	3,62,850	–	–
TOTAL - - -	8,271	4,25,183	8	–

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average of upwards of 33 rupees a month. I believe that, as a class, they are wholly unfit for the duties intrusted to them, and that no increase of salary will ever qualify them for the discharge of those duties. I think that they should be altogether superseded by a new class of officers, to be styled naib darogahs, at the rates of salary proposed by the Lieutenant-Governor for the mohurirs. The naib darogahs should be chosen from young men of education, who, if the offices of darogah and of deputy magistrate be open to them, will probably be induced to accept employment as naib darogahs, in which they may be trained for the higher offices above mentioned. This seems to be, at least, one great object of the proposed increase of expenditure.*

If any of the present mohurirs are qualified for the duties, they may be selected for the employment of naib darogahs.

I concur in thinking that the salaries of the jemadars and burkundauzes should be increased as proposed; but I think that no police-officer under the rank of a naib darogah should be allowed to exercise the powers of a darogah, or to hold investigations, except in a case of emergency, in which they may be specially appointed for the duty. At present a jemadar is considered as the third officer at a thannah, and, in the absence of the darogah and mohurir, is authorised by law, without any special appointment, to exercise all the powers vested in a darogah. (Regulation XX. of 1817, Section 4, Clause 3). His Honor the Lieutenant-Governor considers that the darogahs and mohurirs are amply sufficient for all investigations of a serious character, and that, as regards cases of secondary importance, jemadars selected from burkundauzes, and receiving from 10 to 20 rupees per month, may safely be trusted to conduct the necessary inquiries. (Letter, 30 April 1855, No. 774, para. 31.) If the deputy magistrates proposed be appointed, I hope that it may be found unnecessary to authorise the jemadars to act as darogahs, or to make investigations, in any case; for I believe that great corruption and oppression are the consequences of the powers now vested in the lower classes of the police.

I doubt whether any salary less than 5 rupees a month will be sufficient for the burkundauzes. His Honor the Lieutenant-Governor proposes—

¼ at 6 rupees a month.
¼ at 5 „ „
½ at 4 „ „

I think that they, or at least such of them as are intended to act as preventive policemen, should be selected from men who can be relied on for courage and energy when opposed to such classes as the lattials. I agree with the Lieutenant-Governor in thinking that the burkundauzes should have promotion to look forward to as a reward for good conduct, and that they should be eligible for employment as jemadars.—Letter as above, No., 774, paras. 29 to 35.

I concur as to the 5th and 6th proposals of the Governor-General.

If the proposed number of deputy magistrates be sanctioned, there will be 200, which, after deducting from the whole number of thannahs those in the Sontal districts and in large cities, will give nearly one deputy magistrate to every two thannahs, or at least one to every two of the most important thannahs.

It appears to me, however, that the deputy magistrates, or, I would rather call them, deputy superintendents of police, should not exercise any judicial powers, as proposed by the Governor-General.† I think it should be their duty to superintend the police within their districts, and the investigation of all cases of crime committed therein, and, with the assistance of the darogahs and naib darogahs, to collect evidence, to take the depositions of witnesses, and to bind them over to give evidence; also to see that every case of crime committed within their districts is taken before the proper court for trial, with the necessary witnesses and evidence to establish the charge. They should communicate with the deputy magistrates of the adjoining districts, with a view to the apprehension of criminals, and with the superintendent of police of the zillah in which their own districts are situate; and the darogahs and naib darogahs should be bound to communicate to them every case of heinous crime committed within their respective thannahs, and should report to them whenever they have occasion to leave

* *See* Letter from Secretary to Government of Bengal, 30th April 1855, No. 774.
† *See* Proposal, No. 9.

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leave the thannah for the purpose of making investigation. These, and other duties connected with the prevention and detection of crime will require them to be constantly moving about their districts. The Lieutenant-Governor remarks—"I think that the proper size of a deputy magistrate's jurisdiction has not been unreasonably stated by an intelligent and experienced native friend, whom I consulted on the subject, as so much as the magistrate could go to one end of in his morning ride, and the other end in his evening ride."* This would probably comprise two or at most three thannahs. This is evidently impossible, when it is considered that the size of a thannah, according to regulation, is 10 coss square, which, if the district of a deputy magistrate comprised only two thannahs, would involve the necessity of a morning ride of 40 miles from his head-quarters to one end of his jurisdiction and back, and another ride of the same extent in the evening; but it shows that he should be constantly moving about his district.† If his own head-quarters and the two thannah stations subject to his jurisdiction were most favourably situate, he could not even visit each darogah's station every alternate day, without travelling at least 20 miles a day. To exercise judicial duties, a deputy magistrate ought to be stationary, or at least he should have fixed times for holding his court at particular places; otherwise, when a prisoner is sent up to him for trial, together with the witnesses, from a considerable distance, it may be found that, in the discharge of his police duties, he is at quite a different part of his station. Independently, therefore, of the objections so powerfully urged by our honourable colleague, Mr. Grant, against the union of judicial and police functions, I think it is impossible for the same officer to exercise any active superintendence over the police of his district, if he be expected to exercise judicial powers.

I therefore think that it will be better to have all judicial powers to be exercised by the Sessions Court, the magistrate, and the subordinate criminal courts, as proposed by the Law Commissioners.

The deputy magistrates, however, should be authorised to take the depositions of witnesses, and to submit their proceedings to the magistrate in all cases beyond the competency of the subordinate criminal courts; and in such cases the magistrate should be authorised to order the offender to be sent up for trial before himself; or, if the case be beyond his competency, to commit it for trial before the Sessions. This would greatly relieve witnesses in cases triable only by the magistrate and Sessions Courts—an object which it is most desirable to attain.

I have already written a minute upon the subject of the union of the offices of collector and magistrate. I still retain the opinion which I then expressed, that the two offices should not be reunited, if the magistrate is to continue to have any superintendence over the police of the district.‡

If the magistrate be relieved from all police duties, I do not think that the union of the offices of collector and magistrate will be so objectionable. I feel very great doubt, however, whether the collector will have time properly to attend to the judicial duties of magistrate if the new Sale Law be passed.

But whether the offices of collector and magistrate be held by the same person or not, it appears to me that the management and superintendence of the police in each zillah should be entrusted to a European officer, who should have no judicial or other duties, and should be required to be frequently moving about in his district.

This leads me to consider the second proposal of the Governor-General, viz., that the police be superintended, as at present, by the Commissioners of Divisions acting under the general control of Government.

I think it is very important that the police, in addition to the European superintendent in each zillah, should be subject to Commissioners of Divisions; but, as far as the police are concerned, I think it would be better that the divisions should be larger than those now entrusted to the Commissioners of Revenue. One superintendent of police for the whole of the Lower Provinces has been found insufficient; but I think that two Commissioners of Police, or three at most, would be fully able to discharge all the duties belonging to his office. I doubt very much whether it is necessary to continue the Commissioners of

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* Minute on Police and Criminal Jurisdiction, para. 47.
† 22 of 1793, section 4.
‡ See Minute, dated 15th May 1856.

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of Revenue in the Lower Provinces of Bengal, with the exception of the Commissioner of Cuttack. Those commissioners were appointed under regulation I, of 1829, the preamble of which points out the defects which it was intended to correct.* Since that time many of the duties which those commissioners were intended to discharge have been transferred to other functionaries; † the North-western Provinces have been placed under a Lieutenant-Governor, and a Sudder Board of Revenue for those provinces has been appointed, and the duties of the Commissioners of Revenues, in respect of the determination of questions relative to the assessment of lands, so far as the permanently-settled districts are concerned, are absolutely nothing.

I think it is, therefore, well worth consideration, whether, of the eight Commissioners of Revenue in the Lower Provinces, seven might not be abolished, leaving the Commissioner of Cuttack alone, and substituting two or three divisional commissioners of police.

If this can be done, there will be a saving of four commissioners at 36,000 rupees a year each, and of their establishments, amounting, I believe, on an average, to 910 rupees a month, or 10,920 rupees a year for each commissioner; and possibly for the two or three commissioners of police a less salary than 36,000 a year, and less expensive establishment might be considered sufficient.

This saving ‡ would go a great way towards paying the zillah superintendents of police at the same rate of salary as is now paid to the magistrates.

I concur in thinking that the moonsiffs should be vested generally with criminal powers; and I am inclined to think that they may be trusted with the powers proposed by the Law Commissioners to be vested in subordinate criminal courts of the 2d class, viz., imprisonment for a term not exceeding three months, and fine not exceeding 200 rupees; but it appears to me that it will not be safe at present to entrust the native judges, or the subordinate criminal courts, with power of awarding punishment to the extent above mentioned upon summary conviction without appeal. That would be giving them greater power than is now vested in justices of the peace in England.§

If the regular courts of justice be authorised to try criminal cases to the extent proposed by the Law Commissioners, I think it will be scarcely necessary to invest unofficial residents of the interior with criminal jurisdiction; and if the proposed number of deputy-magistrates be appointed, I do not think that it will be necessary or advisable to invest such residents even with power of committing offenders for trial.

Upon this point, however, I would rather not express any positive opinion, until after the code of criminal procedure has been passed, and the official establishments for the administration of criminal justice and police have been finally determined upon.

30 April 1857. (signed)) *B. Peacock.*

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30 April 1855.

LETTER from the Secretary to the Government of *Bengal* to the Secretary to the Government of *India*, Home Department.

Judicial.—No. 774.

Sir, Dated Fort William, 30 April 1855.

I AM directed by the Lieutenant-Governor to submit, for the consideration of the Supreme Government, the following propositions for the improvement of the mofussil police in these provinces.

2. Two

* Such as the principal duty of holding sessions of jail delivery, which has been transferred to the sessions judge.

† In 3d part of the recital of Regulation I. of 1829.

‡ 1,87,680 rupees a year.

§ In expressing this opinion, I wish to guard myself against its being understood to extend to trials before the Superior Courts and a jury.

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2. Two considerable defects in the police of Bengal are—

First. The unsatisfactory footing on which the village watchmen are now maintained; and

Second. The deficient number, and inadequate pay, of the regular police.

3. With regard to the village watch, local investigations have been in progress during the past cold weather, the results of which will be communicated hereafter to the Supreme Government.

4. With regard to the regular police, I am now desired to submit the following statements and suggestions:—

5. Up to the year 1843, the police darogahs throughout the Lower Provinces received salaries varying from 100 rupees to 25 rupees a month. Out of 508 officers of this class, 490 drew salaries of 30 rupees a month and under, and of these no less than 375 received only 25 rupees a month.

6. In 1843 the Deputy-Governor of Bengal, Mr. W. W. Bird, proposed to the Government of India to raise the salaries of the darogahs in the following manner, namely, 25 to receive 100 rupees a month each, 50 to receive 75 rupees, 100 to receive 50 rupees, and the remaining 333 to receive 25 rupees. This proposal was calculated to involve an additional annual cost of 74,371 rupees, and thus, it was observed, "a commencement would be made, at comparatively little expense, to supply those incentives to good conduct in the police, without which any improvement in the existing system has been found to be utterly unattainable."

7. The scheme was sanctioned by the Government of India, and its immediate introduction authorised. It was at the same time observed that while the President in Council "admits * the inadequacy of the existing rate of pay of darogahs, and the necessity for removing as much as possible so evident a cause of corruption amongst this class of police officers, by rendering their remuneration equal to their decent support, and by opening to them the reward of good service in advancement or promotion, he is very desirous that the principle of the arrangement should be carried still further, not only in respect to darogahs, but to other classes of police officers, and the Government will be prepared to approve the extension of the measure, if, in due time, it is found that the arrangement now sanctioned has tended to raise the character and insure the usefulness of those whom it is intended to affect."

8. The Honourable Court fully approved of the principle of increasing the pay of the police darogahs, and desired that it might be at once carried out to the full extent previously recommended by the Police Committee in their report of 1838, viz., that there should be fifty darogahs on 100 rupees, one hundred on 75 rupees, and the whole of the remainder on 50 rupees each.

9. This extended measure, providing for 527 darogahs, as shown in the margin,† was accordingly carried out at an increased annual expense of 2,13,871-9-0 rupees, and the establishment, as then revised, has been in force ever since.

10. As regards the "other classes of police officers," referred to in the Despatch of the Supreme Government of 1843, no steps have, up to this time, been taken to improve their position. Of such officers the most important are those termed respectively mohurirs and jemadars, one or more of whom is attached to each thannah,

* Mr. Secy. Davidson's letter of the 31st May 1843.

	On 100.	On 75.	On 50.	Total.
† Regulation Provinces - -	44	88	337	469
Arracan - - - -	1	2	10	13
Assam - - - -	3	6	15	24
South-western Frontier -	2	4	12	18
Cachar - - - -	0	0	3	3
	50	100	377	527

thannah, in addition to the darogah. The pay of the mohurir is rarely more than eight rupees a month, and often less; and that of the jemadar is about the same, though sometimes as low as four rupees. These officers are employed to assist the darogah, and are vested by law with the same powers as that officer, exercising them either in the darogah's absence from the thannah, or when deputed by the darogah on special duty, or when placed by the magistrate in charge of an independent jurisdiction.

11. It cannot fail to be perceived, that if a salary of 25 rupees was insufficient to secure the services of respectable and honest men as darogahs, a salary of 8 rupees a month (which is somewhat above the average) must be still more insufficient to secure the services of honest men as mohurirs and jemadars.

12. The position of these officers was brought specially to the notice of Government in 1853, in connexion with a very striking case, in which three persons who had been sentenced for dacoity by the Sudder Court, in 1851, to twelve years' imprisonment, were subsequently proved to be altogether innocent of the charge. When the innocence of the convicted men was brought to the notice of Government, the case was referred to the Sudder Court for report, and the following is an extract from Mr. J. R. Colvin's minute, from which it will be seen that the cruel injustice which was inflicted upon these innocent men, and from the full measure of which they were saved only by the merest accident, was believed to be mainly owing to the misconduct of the jemadar employed to conduct the inquiry.

13. "The best security," Mr. Colvin observed, "we can have for the correct and safe administration of justice, is in the doing all that gives reasonable hope of success towards employing an honest police for the instituting of inquiries, and collecting evidence in regard to crimes committed. It cannot be too often, or too earnestly impressed upon the Government, that it is not only the pay of the darogah of a thannah that should be made sufficient for respectability. The mohurirs and jemadars, who are and must be daily employed (as in this case) with independent powers, are excessively underpaid; Mr. Wauchope notices that the investigation in the present instance was held by a jemadar receiving six rupees per mensem. It cannot be matter of surprise that parties so paid, and exercising such great authority, under very little practical check, should be found to be open to temptation, and to lend themselves, as there is every ground to fear has been done here, to the gratification of private malice."

14. The above extract was forwarded by order of the most Noble the Governor of Bengal to the late superintendent of police, with a view to his reporting as to what measures he would recommend, so that the investigation of all heinous crimes might invariably be conducted by an officer of the rank and pay of a darogah.

15. Mr. Dampier's answer was briefly as follows, and the correctness of it cannot be impugned:—"I know of no method," he said, "which can be devised, by which the investigation of heinous crimes may not, under any circumstances, be entrusted to an officer below the rank and pay of a darogah, excepting by a very great addition to the number of those officers."

16. Mr. Dampier, it is to be observed, has on other occasions expressed his opinion as to the necessity of raising the pay of the mohurirs and jemadars, both as a measure of policy and of justice. Appended to this letter will be found extracts from his reports on this subject. Mr. Mills likewise, than whom there is no one whose opinion on the subject is entitled to greater consideration and respect, has thus referred to the matter in one of his circuit reports; "The whole police system needs a change; but to remodel it effectually, a considerable outlay and increase of expenditure must first be assented to by Government, and, until that be done, it is useless to occupy space with a description of the reforms which should be introduced. In the present system there is one great and striking anomaly. The pay of a darogah ranges from 100 rupees to 50 rupees, and that of a mohurir, who holds almost as many local investigations into crimes as the darogah does, and performs other equally responsible duties, is only eight rupees

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per month. I think that the police mohurir's pay should be raised at once to 20 rupees, and the jemadar's to 12."

17. In addition to what is urged above, the Lieutenant-Governor desires me to observe, that another consideration has arisen of late years, to which almost every officer who has been connected with the police administration has called the attention of Government.

18. The expediency of selecting an increased number of our native officials from among persons educated in English schools and colleges is now recognised, and, to a certain extent, acted on.

19. As regards the police department, Mr. Dampier issued a circular in May and June 1850, calling upon the magistrates of Bengal Proper to encourage men of education to come forward as candidates for police employ, and to address the heads of the different colleges and schools for the purpose of obtaining the names of candidates. In the course of last year a return was called for of the results of the above circular, and the replies of several commissioners on the subject have been received.

20. These officers are unanimous in opinion as to the result of the attempt, viz., that although the magistrates would be very glad uniformly to employ educated natives as darogahs, from the greatly increased degree of confidence which they would have in their integrity, as compared with the old class of darogahs, and, eventually, also in their ability and competence, as soon as they should have gained sufficient experience; yet that it is impossible, except in very rare and special cases, to appoint men to darogahships who have had no previous training at all in police duties, in the lower and less responsible grades, and that they cannot find educated men who are willing to accept the appointments of mohurir or jemadar, even with a specific promise of early promotion to darogahships, so long as the pay of those appointments is what it is at present.

21. It certainly seems to the Lieutenant-Governor that it is impossible to expect that young men who have passed several years in acquiring, frequently at considerable expense, the high class education given at our English schools and colleges, should accept the position of mohurirs and jemadars, as these appointments are paid at present, not only because the allowance is inadequate to provide them with the merest necessaries, but because those appointments will not be held in respect by their countrymen, whatever the character of the incumbents, so long as the low pay must perpetually give rise to the suspicion of its being eked out by dishonesty and corruption.

22. The other alternative, that of appointing educated men at once to the post of darogah, has, it appears from the Commissioners' Report on this subject, been frequently tried, but even under the ablest magistrates has been found not to answer, except in very rare cases of remarkable ability.

23. The majority of the commissioners have recommended that a salary of 30 rupees a month should be paid to the thannah mohurir, a somewhat lower rate being paid to the jemadars.

24. With a view to determine the lowest rate of pay which it is proper to assign to the class whose services it is desired to obtain for these important duties, an estimate is annexed in the margin,* of the actual expenses which it is believed that

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* Food for himself and two servants at the very lowest scale - - 10 – – (a)
A cook - - - - - - - - - - - - 3 – –
A man to fetch the bazar, look after his clothes, &c. - - - - 2 – –
Clothes, &c. - - - - - - - - - - - 2 – –
Washing, barber, pans, &c. - - - - - - - - 1 12 –
Rent (average) of lodgings - - - - - - - - 1 4 –
Travelling expenses in moving about the interior of his thannah jurisdiction (for which he receives no allowance) - - - - - 5 – –
Total - - - 25 – –

(a) This is based on an actual estimate of the cost of the several items of expense on this head incurred by natives of the class referred to.

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that a native officer of the class and position referred to must absolutely incur. This estimate, it will be observed, leaves, out of a salary of 30 rupees a month, little or nothing for the support of his family; and as some of the items specified are below what would be necessary in many localities, it seems impossible to avoid the conclusion that the salary of a police mohurir should not, at all events, fall below, and probably ought, in some cases, to exceed, 30 rupees a month. The Lieutenant-Governor would recommend that there should be three rates of pay for mohurirs, viz., 30, 35, and 40 rupees a month.

25. The number of mohurirs now employed on each grade of salary in the Regulation and Non-regulation Provinces under this Government is given in the margin. It will be seen that out of the 522 officers of this class in the Regulation Provinces, no fewer than 485, or nearly 93 per cent., draw salaries of eight rupees a month and under.

26. The present annual expenditure on account of salaries of these officers for the Regulation Provinces only is 48,796 rupees. To raise their pay in the following manner, namely, one-fourth to 40 rupees a month, one-fourth to 35 rupees a month, and the remaining two-fourths to 30 rupees a month, would involve an annual increase of 1,62,524 rupees, or a total expenditure of 2,11,320 rupees. To raise the pay of these officers in the same manner in both Regulation and Non-regulation Provinces, would increase the annual expenditure from 61,828 rupees to 2,53,800 rupees, being an increase of 1,91,971 rupees.

27. The number of jemadars now employed on each grade of salary is shown in the margin.* Out of 783 officers of this class, 702 draw salaries of eight rupees and under. The annual cost of this force is 74,420 rupees.

28. The extent to which the pay of police jemadars should be raised must depend upon the settlement of the following questions:—

1st. From what class are they to be appointed? And,
2d. What are to be their duties?

29. The

* MOHURIRS.

Regulation Provinces.			
1 at 20	20	–	–
6 at 18	108	–	–
1 at 16	16	–	–
6 at 15	90	–	–
3 at 12-5-4	37	–	–
2 at 12	24	–	–
16 at 10	160	–	–
2 at 8-5-9	16	11	6
193 at 8	1,544	–	–
20 at 7-8-0	150	–	–
2 at 7-5-0	14	10	–
267 at 7	1,869	–	–
2 at 6	12	–	–
1 at 5	5	–	–
522	4,066	5	6

Non-Regulation Provinces.			
10 at 20	200	–	–
1 at 16	16	–	–
7 at 15	105	–	–
19 at 12	228	–	–
29 at 10	290	–	–
5 at 8	40	–	–
8 at 7	56	–	–
21 at 6	126	–	–
5 at 5	25	–	–
105	1,086	–	–
627 persons monthly	5,152	5	6
			12
Annual Rupees	61,828	2	–

† JEMADARS.

Regulation Provinces.			
1 at 14	14	–	–
4 at 12	48	–	–
7 at 10	70	–	–
15 at 8-5-9	125	6	3
2 at 8-5-8	16	11	4
1 at 8-5-0	8	5	0
534 at 8	4,280	–	–
1 at 7-8-0	7	8	–
39 at 7	273	–	–
2 at 6-4-4	12	8	8
73 at 6	438	–	–
1 at 5	5	–	–
1 at 4	4	–	–
681	5,302	7	3

Non-Regulation Provinces.			
2 at 15	30	–	–
13 at 12	156	–	–
36 at 10	360	–	–
26 at 8	208	–	–
1 at 7	7	–	–
18 at 6	108	–	–
1 at 5-3-7	5	3	7
5 at 5	25	–	–
102	899	3	7
784 persons monthly	6,201	10	10
			12
Annual Rupees	74,420	2	–

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29. The Commissioner of Rajshahye has recommended that the officers from whom it is desired to recruit the body of darogahs should all, in the first instance, be appointed to the grade of jemadars, and subsequently promoted to the grade of mohurir and darogah. The Lieutenant-Governor, however, thinks that this proposal is unadvisable, as it would deprive the burkundauze class, as a rule, of all hope of bettering their position, and, therefore, of that incentive to integrity and exertion which is at present so much needed. If the burkundauzes have promotion to look forward to, they will be efficient, instead of inefficient, and will be well content, while waiting for it, to receive a lower rate of pay than they otherwise would be satisfied with, and will be less likely to resort to corrupt sources of gain.

30. The mohurirships will, I am to observe, form a sufficiently large school for the darogahs, and the only material question is, whether darogahs and mohurirs, without the aid of the jemadars, will be sufficient for the higher and more responsible duty of holding investigations.

31. The Lieutenant-Governor considers that they will be amply sufficient for the investigation of all cases of a serious character; and that, as regards cases o secondary importance, jemadars drawn from the burkundauze class, and receiving a salary of 10 to 20 rupees a month, may safely be trusted to conduct the necessary inquiries. The jemadar's duty, however, as a general rule, ought not to be of this description, and his position requires rather the possession of a natural sagacity, conjoined with bodily energy and courage, than an education of any high order.

32. The Lieutenant-Governor would recommend that the jemadars should likewise be divided into three ranks in the same proportion as that proposed for the mohurirs, salaries of 10 rupees, 15 rupees, and 20 rupees a month, being assigned to each rank. The Lieutenant-Governor does uot consider 20 rupees a month to be too high a rate of salary to assign to a small number of this class of officers, because it is obvious that if the increase to the salaries of the mohurirs shall have the effect of inducing a superior class of persons to take office in that grade, it will become a thing of almost impossible occurrence that a jemadar—originally a burkundauze—should ever rise to be a darogah. If the proposed increase should be extended to both the Regulation and the Non-regulation Provinces, the annual expenditure on this account would be 1,29,060 rupees, being an increase of 54,639–14–0 rupees.

33. But however great the importance of the measures above recommended, the Lieutenant-Governor attaches little less importance to the improvement of the character of the ordinary constabulary, the police burkundauzes. The presence of the jemadars and mohurirs in the interior of their police jurisdiction is, at most, exceptional; but the burkundauzes are everywhere constantly moving over the whole of their thannah circle, so that acts of oppression or extortion on their part are felt in every homestead. Their power for evil, though on a smaller scale than that of the higher grades, is more extended in its range.

34. With the stimulus to good conduct which the hope of promotion to properly paid jemadarships will open to them, the Lieutenant-Governor is of opinion that it will be sufficient to raise one-half of the whole number of burkundauzes above four rupees a month, but he would have none under that amount. He would propose to pay one-fourth of the whole number at the rate of six rupees a month, and one-fourth at the rate of five rupees a month, the remainder receiving four rupees a month.

35. This rate of pay will be enough to enable a man of honest intentions to be honest. And there are, no doubt, certain emoluments which these men will always receive in addition to their pay, and which involve no actual corruption or dishonesty, such as presents at marriages, festivals, and the like, which may be reasonably taken into account in estimating the pay which they should receive.

36. The total number of police burkundauzes and their present scale of pay is

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is shown in the margin.* The annual cost of maintaining these 9,077 persons is now 4,37,382 rupees. If one-fourth of the whole number be paid at the rate of six rupees a month, one-fourth at the rate of five rupees, and the remaining two-fourths at four rupees a month, the total annual increase of expense, in both the Regulation and the Non-regulation Provinces, will be 91,998 rupees per annum.

37. The following table exhibits the financial result of the different changes proposed.

	Present Scale per Annum.	Proposed Scale per Annum.	Increase per Annum.	Remarks.
MOHURIRS:	*Rs.* *a.*	*Rs.* *a.*	*Rs.* *a.*	
In the Regulation Provinces - -	48,796 2	2,11,320 –	1,62,523 2	
In the Non-Regulation Provinces -	13,032 –	42,480 –	29,448 –	
TOTAL - - -	61,828 2	2,53,800 –	1,91,971 2	
JEMADARS:				
In the Regulation Provinces - -	63,629 7	1,12,320 –	48,690 9	
In the Non-Regulation Provinces -	10,790 11	16,740 –	5,949 5	
TOTAL - - -	74,420 2	1,29,060 –	54,639 14	
BURKUNDAUZES:				
In the Regulation Provinces - -	3,75,336 –	4,59,564 –	84,228 –	
In the Non-Regulation Provinces -	62,046 –	69,816 –	7,770 –	
TOTAL - - -	4,37,382 –	5,29,380 –	91,998 –	
GRAND TOTAL - -	5,73,630 4	9,12,240 –	3,38,609 –	

38. The outlay involved in these changes is doubtless considerable; and it is not to be concealed that it cannot be looked upon as a final outlay, for our police establishment in the Lower Provinces is not only ill-paid, but it is also even now numerically weaker than it should be, and it cannot but be supposed that, as trade and civilisation expand themselves throughout these provinces, covering them with lines of communication, and giving birth to a busy, energetic race of people, larger measures will be needed for the protection of property and the preservation of good order than now exist. Already this has been practically illustrated

* BURKUNDAUZES.

Regulation Provinces.

58 at 5		290 – –
24 at 4–8		108 – –
7,421 at 4		29,684 – –
298 at 3–8		1,043 – –
51 at 3		153 – –
7,852		31,278 – –

Non-Regulation Provinces.

5 at 6		30 – –
354 at 5–8		1,947 – –
160 at 5		800 – –
325 at 4		1,300 – –
298 at 3		894 – –
67 at 2–8		167 8 –
16 at 2		32 – –
1,225		5,170 8 –
	TOTAL - - -	36,448 8 –
9,077	Annual Rupees - - -	4,37,382 – –

No. 20.
Letter from the Secretary to the Government of Bengal to the Secretary to the Government of India.
30 April 1855.

illustrated in the police establishments which it was found necessary to place upon the Great Trunk Road.

39. The immediate object of the outlay now proposed is to remove what has hitherto been a standing reproach of Indian administration in Bengal, and the Lieutenant-Governor would urge the matter upon the attention of the Supreme Government with an expression of earnest hope that a public measure which is, in his opinion, surpassed by no other in importance, may be recommended to the Honourable Court. The inadequate payment of the subordinate officers of police was one of the matters, it may be remarked, which formed the subject of investigation before the late Parliamentary Committee appointed to inquire into the operation of the Charter Act of 1834.

I have, &c.
(signed) *W Grey*,
Secretary to the Government of Bengal.

No. 21.
Extract from a Police Report of the Superintendent of Police, Lower Provinces.
24 Dec. 1840.

— No. 21. —

EXTRACT from a Police Report of the Superintendent of Police, Lower Provinces, for the first Six Months of 1840; dated the 24th December 1840.

Part of 892d para. But these arrangements will have no good effect, if higher pay is not given to the persons composing the police, and more substantial rewards held out to them for general good conduct and particular cases of exertion.

893d. The pay of a darogah at present is 25 rupees per month, of a mohurir 8, of a jemadar 10. Now considering that these officers, the darogahs in particular, have to keep up a respectable appearance, to proceed at any time to any part of an extensive jurisdiction, and must, the mohurir and darogah certainly, be persons of education and capability of taking, following up, and judging of evidence, I think these sums will be admitted to be too low to render employment in the line a desirable object for a respectable man; those who do enter the service, enter it for the perquisites, and as no higher pay is to be obtained by any exertions or honesty of proceeding, they have nothing held out to them beyond occasional rewards, as an encouragement for good conduct. I recollect it used to be a common saying amongst the people about the courts, "that every darogah had his lotah and mat in the jail," meaning that the service was one most likely to lead to punishment, and in which a man anxious about his character would not enter.

894th. If our present system is to be adhered to, there should, I think, be two grades of burkundauzes at 5 and 6 rupees per month. The mohurirs, on whom all the details of the thannah fall, and who are responsible for keeping up with regularity all the books and statements, should receive 25 rupees, and after 10 or 15 years' service 30 rupees per month; the jemadars 12, and when in charge of a pharee or ghattee 15 rupees per month.

(True extract.)

(signed) *Hodgson Pratt*,
Under-Secy. to the Govt. of Bengal.

No. 21.
Extract from a Letter from the Superintendent of Police, Lower Provinces, to the Secretary to the Government of Bengal.
1 April 1845.

EXTRACT from a Letter from the Superintendent of Police, Lower Provinces, to the Secretary to the Government of Bengal (No. 646 A.), dated Monghyr, the 1st April 1845.

Para 5. I trust I may be excused if I bring to the notice of the Right honourable the Governor of Bengal, the miserable pay received by the mohurirs and jemadars of thannahs, who in many instances exercise the power and authority of the darogahs, and investigate cases of as great importance, are put to nearly the same expenses for conveyance when on duty, and are frequently in charge of considerable outposts. I have adverted to this in the 893d and 894th paras. of my police report for the first six months of 1840, and I feel sure that it will be requisite, if we wish to carry out reform in the police, to hold out higher salaries to these grades of officers, and also to have two grades of rank amongst the Burkundauzes, who, from their limited number, have very hard work to get over.*

(A true extract.)

(signed) *Hodgson Pratt,*
Under-Secy. to the Govt. of Bengal.

* I had a representation sent to me by the jemadars and burkundauzes of a district, urging their claim to some increase of salaries.

POLICE (BENGAL PRESIDENCY).

COPY of the DESPATCH from the Government of *India* to the Court of Directors of the East India Company, dated the 14th day of May 1857, with its several Inclosures, relating to the System of POLICE in the BENGAL PRESIDENCY.

(*Mr. Seymour.*)

Ordered, by The House of Commons, *to be Printed,*
21 *July* 1857.

[*Price* 1 *s.* 3 *d.*]

198—Sess. 2.

Under 16 *oz.*

EAST INDIA (MURZA ALI AKBAR).

RETURN to an Address of the Honourable The House of Commons, dated 11 May 1860;—*for*,

"COPY of further CORRESPONDENCE respecting MURZA ALI AKBAR (in continuation of Parliamentary Paper, No. 159 of Session 1858.)"

India Office,
31 May 1860.

J. W. KAYE,
Secretary in the Political Department.

(Mr. Digby Seymour.)

Ordered, by The House of Commons, *to be Printed,* 4 *June* 1860.

352.

BOMBAY BRANCH
OF THE
Royal Asiatic Society.
Class

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COPY of further CORRESPONDENCE respecting MURZA ALI AKBAR.

To *T. J. D. Dickinson*, Esq., Secretary to the Honourable Court of Directors of the Honourable East India Company, 7 May 1858.

Sir,

IN a Parliamentary paper recently published, I find that in a return to an order of the House of Commons, dated the 18th March last, the Honourable Court of Directors have included the memorial some time since presented by me to the Court, and also a letter from H. B. Frere, Esq., to Lord Elphinstone, and a copy of my memorial, with marginal notes appended by Mr. Frere.

To these two latter documents I have now most respectfully to invite the attention of the Honourable Court. I never heard of either of them until I saw them in the published paper of the House of Commons. I never had an opportunity of answering them. They contain comments on my memorial which I could easily have shown to be unwarranted; and not only this, but they introduce new and most injurious imputations upon my general conduct and character which were made in secret, behind my back, and against which I never to this hour have had an opportunity of defending myself.

I observe also that the decision of the Bombay Government, adverse to my claim for redress, is founded upon this letter of Mr. Frere.

I will not now inquire how far it is consistent with justice to pronounce sentence against any one upon allegations of which he has never even been informed; but having now been made acquainted with the existence of this letter, I undertake to show to the Honourable Court that its comments and statements are so manifestly and palpably erroneous, that if I had had the opportunity of answering them, it is impossible they could have been acted on.

I do not intend to impute to Mr. Frere that he wilfully perverted the truth. Many of his mistakes are so palpable that I cannot believe that he read with the slightest attention the documents bearing upon the subject. It would appear that he assumed the former decision of the Bombay Government to be right, and made no careful examination himself. I can only respectfully point out the grievous errors into which he has fallen, and ask of the Honourable Court, in some way or other, to remedy the injustice which has been done me.

I have the stronger claim upon them for this, because by their returning these documents to the House of Commons, they have been published and circulated, and statements most unjustly reflecting upon me have thus been published under the apparent sanction of the Honourable Court.

I first ask the attention of the Honourable Court to paragraph 36 in the letter of Mr. Frere:

"Judging of Ali Ackbar by the reputation he left behind him in the province, I find that while general repute fully bears out the opinions of his ability, expressed by his successive superiors, Colonel Outram, Sir Charles Napier, and Mr. Pringle, he is universally regarded as a most corrupt and unscrupulous man, who made use of his opportunities as moonshee and interpreter to the Governor, to obtain large sums as bribes, or rather, as propitiatory presents from all wealthy natives who had business with the Governor.

"To him is generally attributed the abstraction of several important papers relating to Ali Morad's affairs, which were in a box belonging to Captain Brown, who knew him well, and after that period never trusted him.

"All this may be unfounded and unjust, but there was nothing about him to excite unjust prejudice against him; he was popular with all, both Europeans

and natives, and when so many of both classes, who have fair opportunities of judging, look upon him as an unscrupulous though clever and agreeable rogue."

This is the picture which Mr. Frere thinks it becoming to give of my reputation in Scinde, without naming one single individual from whom he has heard it, or mentioning any one fact to justify it.

Upon such vague statements the character of any man may be taken away.

The Honourable Court will remember that these statements, deeply injurious to me as they are, were made secretly behind my back, that I never until now knew even that they existed, nor would I have ever done so but for this incidental publication. It is under these circumstances that I claim permission to reply to them.

First. As to my reputation. I ask of the Court, is my character to be judged by the high testimonials given me by Sir Charles Napier, by Colonel Outram, and by Mr. Pringle? The latter, at the very hour of my dismissal, informed the Bombay Government that I bore a high reputation in Scinde.

What does Mr. Frere set against this? That after I had been unjustly dismissed, after I was accused by the Government of obtaining money improperly, they found persons in Scinde to believe the accusation, and they then bring forward this to prove my bad character. Any person acquainted with India, indeed with human nature in any country, will know that when a high officer of Government seeks for evidence to justify the condemnation of a person in my position, too many persons will be ready to supply him with stories and rumours which they suppose will please him. Of course it has been circulated in Scinde that I had been dismissed by Government. Of course this gave rise to rumours prejudicial to my character. The wonder is not that Mr. Frere found persons to give him an evil report, but that he did not meet with persons who would have supplied him with specific accusations. It is quite plain they would have been given if the slightest ground existed for them.

It cannot be said that there was not abundant time for such statements to have reached Mr. Frere. My memorial was transmitted to him on the 1st of August 1855. His report was not made until the 19th of January 1856. Surely within this period of nearly six months some person would have been found to come forward and earn the favour of Government by disclosing any one instance where I had improperly acquired money, if any such case existed. Surely among the rumours against me some one would have said that there was a general belief that I had accepted a bribe in some particular case. Nothing of the kind is even alleged. Mr. Frere was not deficient in hearing, or negligent in reporting, the most trifling gossip to my disadvantage. The idle stories of Captain Brown's laughs are recorded; so is the absurd invention that somebody believes that Captain Brown suspected that I had stolen a box of papers. But the real inquiry being whether, during my connexion with Sir Charles Napier, I had acquired money improperly, he cannot, and he does not say that he heard even the faintest rumour of one single instance in which I so obtained it; and this, with all the advantages of a high Government official looking for even rumours to my prejudice for six months.

But while statements like these are wanting I am accused, without a single reason being given for the accusation, of having stolen a box of papers from Captain Brown.* To any one who knows the facts, the accusation is absurd; the Commission, who tried Ali Morad, investigated this matter, and not a suspicion was pointed at me. Indeed, the condemnation of Ali Morad was in part founded upon the conclusion that another person had been guilty of this theft.†

Mr. Frere does not condescend to give a single reason for a charge of which no one ever heard before, for which he does not bring one particle of proof, and which I denounce as false and calumnious.

Surely it is not too much to say that for any man, no matter how high his position, to make such a charge against another without giving a single particle of

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* *See* Parliamentary Papers relating to Meer Ali Morad, dated 14th December 1852, p. 172.
† Ibid, p. 145, Mr. Maher's Evidence.

of proof, is an outrage upon every feeling that ought to guide the conduct of honourable men.

It is said, that from the loss of the box, Captain Brown never trusted me. It occurred in June 1843. After this, the Government, of which Captain Brown was secretary, obtained for me the rank of a khan bahadoor as a reward for my fidelity. My pay was doubled on the same ground. After this, I was recommended for a pension on the same grounds. I continued to enjoy the entire confidence of Sir Charles Napier, and Mr. Pringle, Captain Brown acting as secretary to both. Captain Brown never gave to either of them a hint of his distrust. He permitted me to be trusted and honoured, and at the end of all this I am condemned on a gossiping statement that Captain Brown did not trust me.

Without making any observations upon the language in which Mr. Frere has thought proper to convey his opinion, but leaving it to the Honourable Court to say whether that language is becoming in a public officer judicially recording his opinion, I pass to other of his statements.

Mr. Frere strongly comments upon the improbability of my adopting the profession of moonshee if I were left by my father the sum of 35,000 rupees, a fortune which certainly did not place me above the necessity of exertion. But he forgets to notice that which was before his eyes in the evidence, that on my father's death, I followed the profession which my father had filled, a fact which puts an end to this notice of imputability, even if otherwise it could exist.

He asks again, why I did not prove the possession of a patrimony from my father? He had before him, when he wrote this, the proof I had given, by producing the account of the man, who had been my own and my father's banker, giving me credit in the very beginning of that account for the sum left to me by my father. What possible proof could I produce better or higher than this? But Mr. Frere thinks I ought to have proved the state of my father's affairs by producing some young men of my own caste, whatever he means by this expression. I have proved, by an appeal to Dr. Winchester, that when I first entered the service of Colonel Outram, I apprised my superiors of the fact, that I had money left by my father.

What, then, becomes of the improbability of my using that money in trade, and having increased it? The improbability of this Mr. Frere confesses, rests entirely upon the assumption that the account I gave of my patrimony from my father is untrue.

But Mr. Frere goes on to say that I had an opportunity of explanation and proof, and did not avail myself of it.

I am obliged to ask of the Honourable Court if anything can be more unjust than this?

In 1847, when I gave a written explanation of the mode in which I had acquired this money, I accompanied it by a number of sworn affidavits, which I thought fully proved it. These were given to Sir Charles Napier, and by him sent to the Governor General. I heard no more upon the subject. Is it possible to say, with the least semblance of justice, that I never attempted to offer proof at the time when it would have been easy to afford it? What more, I ask, was I to do? Was I to accuse myself by treating my explanation and my evidence as insufficient? It was for those to whom they were given to ask for any further explanation. But other matters are brought against me: Mr. Frere is pleased to comment on my extravagant living at Kurrachee. If all this were true, it had nothing to do with money which I had acquired previously; but I could show it to be untrue.

After I left Kurrachee I sold the house, represented as one of the best in the town for its value, for 60 *l.*; and if I were to trouble the Honourable Court with my private affairs, I could show that the story of my keeping racers has just about the same foundation in fact.

But what are we to think of the accusation which rests upon the assertion that "I was supposed to be spending at least as much as the salary I drew?" my statement being, that before this period I had acquired money enough to permit me to spend my own salary if I pleased. It so happens that I never asserted that I saved out of my salary at Scinde. This statement, as to my expenditure while there, is dragged in solely for the purpose of damaging me.

But Mr. Frere principally relies on the marginal annotations on my memorial.

I undertake to satisfy the Honourable Court that these annotations are founded upon the most singular and most unaccountable mistakes. I beg leave to submit to the Honourable Court my answers to these comments. I enclose the printed copy of my memorial, with Mr. Frere's marginal annotations. I have underlined in red ink and numbered the marginal notes to which I offer my replies; and if I can only persuade the members of the Honourable Court to give their attention to the answers, I then think they will convince them of the injustice which has been done to me by the comments of Mr. Frere.

In my observations on these comments I am sure the Honourable Court will forgive the freedom with which I have written.

Once for all, the Honourable Court will bear in mind the circumstances under which I have been dismissed. No specific charge of any kind has been brought against me; I have never been convicted, or even accused, of any offence.

Before 1845 I had deposited with Aga Mahomed Rahim, a banker, in Bombay, a sum of about a lac of rupees.

Aga Mahomed Rahim had up to that time the highest reputation in Bombay: he was esteemed a man of great wealth and high integrity.

But just about this period a suit was approaching its termination, in which he was called to account for large sums of money which came to his hands as executor of Mirza Ali Khan.

Foreseeing that a decree must be pronounced against him in that suit, he secretly made preparations to abscond from Bombay, and turn all his property into money to evade it.

It was while things were in this state that I sent him an order to pay the 10,000 *l.* He had no money to meet the demand. He endeavoured to put off my demand by writing a letter to Sir Charles Napier, in which he pretended that he suspected I had got these sums of money by some improper means, and that, therefore, he was afraid to pay them to me. He had at this time the larger portion of the money for three years; although the letter was addressed to Sir Charles Napier, he sent it to the Governor of Bombay.

Soon afterwards his plan of absconding from Bombay was detected. It was brought before the Supreme Court, and he was arrested; but, although he was prevented leaving the island, all his moveable property was shipped off, and lost to his creditors.

Soon after this a decree was made against him for eleven lacs of rupees, of which he had defrauded the children of the testator. His ruin was complete; he petitioned the Insolvent Court; he returned no property in his schedule; his large property, of which he was the ostensible owner, was found all to be mortgaged to various persons.*

The Insolvent Court dismissed his petition for fraud, and he lay in gaol without possession of a single rupee.

Immediately after his refusal to pay my order for the money in his hands, I had been fortunate enough to obtain from him a mortgage on some of his property. My mortgage, like all others, was disputed by his creditors, and was the subject of a suit in the Supreme Court in 1847, and in 1848, of a trial. In the trial I succeeded, and my mortgage was upheld, except as to one portion of property to which it was found he had no title, the property being merely his wife's.

The letter which he so wrote supplies the only ground of my dismissal. It was thought by the Bombay Government that the possession of so large a sum of money by me must be explained; and that unless I could account for it, it must be assumed that I had made it dishonestly. In what way I so made it, no one to this time has ever said. It sometimes would appear to be insinuated that I must have misappropriated the Government money. No one, however, has ever alleged that I had a penny of Government money in my hands. At other times, it is stated that I used my opportunities to receive bribes or presents. No one can refer to a single instance in which I have ever been shown to have received a bribe. The charge against me is solely that I have a large

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* Oriental Cases, by Sir Erskine Perry, page from 1 to 14.

large sum of money, and did not show to the satisfaction of the Bombay Government how I made it.

My answer is that I did show this, and that in 1845, when I first saw the letter of Aga Mahomed Rahim, I told Sir Charles Napier that all the money was not my own; that 70,000 rupees were; that part of this I had left by my father, a large portion I had made in trade, and the rest was saved from my income.

I gave the same account in writing in 1847, and again in 1848. All the efforts of my accusers have been directed to show that this account is unsatisfactory or untrue.

It is said that it is not consistent with the facts, and also that it is contradicted by the evidence given by myself and by Aga Mahomed Rahim in the proceedings in the Supreme Court in 1848.

I will not trouble the Court by repeating the arguments which I submitted to the Indian Government in my memorial and letter to Sir James Melvill, in 1855.

These documents were referred to Mr. Frere, and he has made his comments upon them, comments which influenced the decision against me. My object now is to show that these comments are not warranted by the facts or documents in the case.

Even if I could hope for nothing from this letter but the consciousness that I had refuted misrepresentations, it would be due to myself not to permit them to pass unexposed, when their exposure is so easy and so plain.

But I will not conclude it without making one more appeal to the justice of the Honourable Court. They know that the refusal of the Bombay Government to accede to my memorial is based upon the reasonings of Mr. Frere. Every member of the Court who will read my observations, will be perfectly convinced that those reasonings are founded on an entire misapprehension of all the facts of my case. Surely it ought to follow that the decision founded on them should be reversed.

Since I have passed my time in this country and have seen the honour in which the memory of Sir Charles Napier is held by his countrymen, I have thought it strange indeed that many individuals in India whom he honoured with his friendship, have been, like myself, the victims of a cruel persecution. If I had no other claims upon the attention of the Honourable Court than the letter in which, when leaving Scinde, he begged, as a personal favour to himself, that I should receive a pension, that claim would be a strong one. Instead of finding favour as his friend, I have been hunted down with the most malignant perseverance. My private affairs have been inquired into. In vain did successive authorities in Scinde pronounce me free from blame. To get up a pretence for reviewing their decisions, evidence was called for from the records of the Supreme Court, which had nothing whatever to do with any charge against me. I was condemned upon misrepresentations of that evidence, without being allowed an opportunity of explaining the most palpable mistakes. And, finally, my memorial is rejected upon statements sent in behind my back, which contain, I will boldly say, more mistakes and misrepresentations of the most obvious facts than were ever before put into the same space of writing.

This treatment has been given to me, whom Sir Charles Napier recommended to special favour; to whom he said he was greatly indebted for the success of his movements; and to me, against whom to this moment no charge can be brought; against whom no accusation is made, except this, that I was the owner of more money than my enemies think I ought to have possessed.

I have the honour to enclose with this letter my observations on Mr. Frere's marginal annotations.

I have, &c.
Mirza Ali Ackbar Khan Bahadoor.

OBSERVATIONS respectfully submitted to the Honourable the Court of Directors upon Mr. *Frere's* Annotations upon the Memorial of *Mirza Ali Ackbar*.

No. 1, Parliamentary Paper, p. 31.—"He was nothing more than a moonshee to Captain Hogg, Persian interpreter."

The matter is of no real importance, except as it shows the desire of Mr. Frere to lower me; but I repeat my assertion, that I was moonshee on the personal staff of Lord Keane; and if Mr. Frere had taken the trouble to look at the documents before him, he would have seen that Captain Hogg was not the Persian interpreter, but Captain Powell was.

No. 2, p. *ibid.*—"I can find no trace of this mode of accounting for part of his wealth till very late in the discussion."

I quote the exact words of my statement to which this refers: "3. Whilst at Lahore, his Lordship and his staff received several valuable presents from the durbar, and valuable presents were also made to your memorialist as attached to the staff, and his Lordship expressly permitted his staff and your memorialist to retain them."

So far from its being true that no trace of this statement is to be found until late in the discussion, in answer to questions put to me in the Supreme Court of Bombay, in April 1847, I swore that I received these presents. I did so because I was asked questions upon the subject, as I now know at the instance of a member of the Government of Bombay.

The following interrogatory was put to me, and I gave the following answer:

QUESTION.—Page 440, Parliamentary Papers, No. 615, 15 June 1853.

WHAT is your office or employment, and what salary did you receive, and how long did you receive such salary? When was it raised to the present amount, and what was it previously to such increase? Have you received any perquisites of office, or other income, independently of your salary, and from what source? Where did you obtain the large sums of money mentioned in the several conveyances set up by you? Disclose the truth of the several matters and things inquired of you by this interrogatory, according to the best of your knowledge, recollection, information, and belief.

ANSWER.—Page 414.

AND this examinant saith, that his office and employment is principal moonshee to Sir Charles James Napier, Governor of Scinde; and this examinant at first, and until the year 1844, received a salary of 260 rupees per mensem under the said Sir Charles Napier; and this examinant's salary was raised to the present amount of 520 rupees per mensem in the year 1844; and this examinant saith, that during the campaign in Affghanistan, in the years 1839 and 1840, this examinant was the moonshee employed by the late Lord Keane; and whilst at Lahore, this examinant received several valuable presents from divers persons, but not of office; and he obtained, as deposit, a portion of the several sums of money mentioned in the said conveyance from a friend of this examinant in Scinde, whose name this examinant is precluded from disclosing; and this examinant lastly saith, that he is ready to produce before the examiner of this Honourable Court vouchers and papers proving and showing the several sums of money from time to time remitted and paid by this examinant to the said Agha Mahomed Sheerazee, principally by means of Government bills on the Treasury, &c., &c.

It does appear unaccountable how this was overlooked by Mr. Frere, commenting as he afterwards did upon that very examination. But surely I am entitled to say that if this statement be considered of importance, its truth could at once have been tested by a reference to any of the officers who served on the staff of Lord Keane. That reference the Government of India could have made with the greatest ease. They have official facilities for ascertaining where their officers now are, and it will be seen then I put my statement in such a form as to admit of the easiest and most direct contradiction, if untrue.

Instead of resorting to this fair and direct course, my accusers prefer condemning me upon ingenious conjectures, and unfair speculations as to the probability of my statements.

It will be seen that in another case, when one member of the Bombay Government did call for a reference to testimony, speculations and conjectures just as confident were answered by the letter of Dr. Winchester, in which that gentleman completely verified my statement.

No. 4, *Ibid*, p. 31.—"The same remark applies here. Do General Outram or Dr. Winchester recollect anything of this?"

This means, that I never mentioned my patrimony until late in the discussion; and yet the very gentleman who writes this, in a note at the end of his letter, represents Captain Brown

Brown as bursting into a fit of laughter when I mentioned my patrimony, upon the very first occasion on which I was asked to give details.

But this is not all. I produced to Captain Brown, in 1847, an account, signed by Aga Mahommed Rahim, in which he shows that he had in his hand 35,000 rupees of my father's at the time of his death.

It further shows that I drew that sum, with the exception of a small balance, in the years immediately following, and, amongst others, by a draft in favour of Hajee Ali, for the exact sum which I have stated I had invested with him in trade; so that, in September 1847, I not only asserted, but proved, that I had been left this patrimony by my father.

But my answer is, if possible, still more conclusive. Mr. Frere appeals to Dr. Winchester and Colonel Outram—the suggestion of one, and only one, member of the Bombay Government Council: the gentlemen were appealed to, and what is the result? Dr. Winchester distinctly and positively confirms the truth of my statement, which Mr. Frere sneeringly doubts. It is now proved, beyond a shadow of doubt, that in the year 1840 Dr. Winchester, the secretary to the British Resident, was aware from myself of the patrimony I had left me.

So that the case stands thus: In 1840 I told the agents of the British Government of the money my father had left me; in 1847 I showed them the account of my banker, which showed its receipt and its expenditure; in the following year I gave a similar written account of it; and in 1857, when I am seeking redress for an unjust dismissal, I am told that this is an after-thought, and, instead of judging for themselves, the Indian authorities reject my claim, grounding their condemnation upon that which they term an able and convincing letter, which boldly asserts that the mention of my patrimony was "an after-thought," and "an invention never thought of until late in the discussion."

No. 1, p. 34.—"This seems to have appeared extraordinary to Mahommed Rahim at least, although described above as the usual course."

This statement refers to the letter written by Aga Mahommed Rahim to Sir Charles Napier, under the circumstances which I have detailed in my letter.

Every one of these bills, it appears by the memorandum obtained from the Accountant-General's office (Commons Papers, 1853, p. 404), was regularly indorsed by the payee. A great number of them were payable to Aga Mahommed Rahim himself, but even as to the others he does not say that it was unusual thus to circulate these bills; he could not even venture to say so three years after he had passed the bills to my credit in the usual course of business. But when the object of that letter is considered, what is to be thought of quoting it as an authority in the course of banking business?

The whole letter of the Aga was manifestly a contrivance to evade honouring my draft for the money I had lodged with him. It was written on the eve of a fraudulent bankruptcy, and just before he was only prevented absconding from Bombay by an arrest.

No. 2, *Ibid.*—"He here discredits every important assertion of his agents, except the bare fact that he has received the money."

This is an observation made upon my denial of the statements contained in Aga Mahommed Rahim's letters to Sir Charles Napier of October 1845.

The unfairness of this is perfectly monstrous. A banker to whom I trust my money, intending to cheat me, writes a letter to Government admitting that he has my money, but inventing a series of falsehoods as the reason for not paying it. I contradict them all, and then I am told that I discredit every important assertion of my agent.

This is repeated several times. I discredit Aga Rahim! As well might it be made a charge against a merchant prosecuting his clerk for embezzlement, that he discredits every important assertion of his agents except the bare fact that he received the money.

No. 1, p. 35.—"Yet Aga Mahommed, the banker, thinks it most unusual. It was not that the bills were payable to the banker, but that they had nothing to connect them with the person who sent them, and who said they were his. Ali Akbar's name did not appear in the remittance at all, and this would appear a suspicious circumstance to any one."

I have answered this already. Aga Mahommed, "the banker," was the fraudulent banker who tried to cheat me. He does not say that he thinks it most unusual. He does indeed pretend that he became apprehensive that if the bills were improperly obtained, the drawers or the Government might come on him for the money, but the absurdity of the pretence was too manifest.

The whole point of this is, that I sent some of this money in bills drawn in the names of others, because I did not wish my own to appear.

These bills were exactly in the nature of bank post bills in this country. It was perfectly immaterial in whose favour they were drawn if they were indorsed; and they would naturally be drawn in favour of the person who asked for them.

If I had chosen to obtain them in the name of others, for the very purpose of preventing my money transactions being talked of, there would have been nothing improper in this. But I had plainly shown that, in fact, they were so drawn because other parties obtained them at the Treasury for me. Hajee Houssein, who obtained most of them, distinctly deposed to this.

I sent them openly to my banker at Bombay, and they were there placed to my account there was no attempt at concealment there.

It must, I repeat, be remembered that the greater portion of these bills were in the name of Hajee Houssein, and that in his deposition of the 22nd December 1846, Hajee Houssein fully stated the circumstance under which they were got in his name.

No. 2, p. 35.—"Why was this omitted from his memorial to the Government of India?"

I presume, because it did not occur to me to state the exact point at which the suit against Aga Rahim by Ali Khan's executors then stood. I cannot conceive what point is intended by this question. It is not meant, I suppose, to imply that the statement of that suit is an invention.

No. 4, *Ibid.*—"Nothing could be more absurd than this. What possible aid could the Aga have got in such a scheme, by dragging in his Sind correspondent?"

It surely is not necessary to answer this. It is proved on the records of the Supreme Court, that at this very time the Aga, then in desperate circumstances, but still maintaining outwardly his credit, was making his preparations to abscond with all the money he could carry away. In this state of things, an order of mine came for 10,000 *l.* He had not the means of meeting it, and unless he could postpone it, his insolvency was precipitated. My order, it will be remembered, was in favour of another bank. It is plain that anything that delayed my demand was essential to his scheme, and equally plain that his letter to the Government was written for the express purpose of gaining time until his plans were matured, and giving a plausible reason for not honouring my order.

Within one month afterwards he was arrested by order of the Supreme Court, at the suit of another creditor, on affidavits that he was about to abscond, and in this discussion of course all his preparations to abscond were disclosed.

But for the interference of that other creditor his plan of baffling me might have succeeded.

But Mr. Frere thinks it perfectly absurd to suppose that his delaying my order for a large sum of money which he could not meet would have helped his plans.

When he failed in putting me off he could not pay me, and was obliged to give me a mortgage.

No. 6, p. 35.—"Here the opportunity of an effective investigation appears to have been lost."

If so, it was by Sir Charles Napier, not by me. I observe that this charge against me is frequently repeated in all the documents that condemn me.

It is said that I deferred investigation until a satisfactery examination of my assertions was impossible.

It is the first time I ever knew it brought as a charge against an accused person, that he was not satisfied with the full and complete acceptance of his answer to the charge by those in authority over him.

But what is the fact, and the fact which was proved on incontestable evidence before the eyes of Mr. Frere? I did earnestly press for an inquiry.

In a letter addressed by me to Captain Brown, secretary to the Commissioner of Scinde, on the 20th June 1848, the following passage occurs:

"Some days after the announcement of the attack upon my character by Aga Mahommed Rahim, I personally waited upon his Excellency the late Governor, and in the presence of Captain Brown, secretary to the Scinde Commissioner, requested that I might be tried by civil court, and thus have an opportunity of clearing myself of any charges that might be brought against me. The answer was, that his Excellency would see about it; and I heard nothing more of it until I was asked to give an explanation of the matter. After so doing, I was told that it was satisfactory."

It will be seen that this letter was addressed to the very Captain Brown in whose presence I allege that I made my request. If that allegation was untrue, it would have been the duty of Captain Brown to have contradicted it. It is, therefore, conclusively proved that in 1845 I requested a judicial trial.

It is equally established, that in 1846 I did all it was in my power to do. When the matter was renewed, I procured the affidavits of every available witness that could depose to any matter connected with me. I placed these affidavits in the hands of the Government; they did not think it necessary to call for further explanation. After this, it is the grossest injustice to insinuate that I shrink from inquiry, or let the time for effective investigation pass by. If any one did so, it was the authorities at Bombay, and who were requested by Sir Charles Napier to investigate the matter themselves.

They were so requested when I was at Bombay, when Aga Mahommed Rahim was there also. They declined to institute the investigation, and said it was a matter solely for the Government of Scinde; and yet this same Bombay Government, which in 1846 refused to investigate the matters, when there might have been by themselves a full investigation, in 1849, without any investigation, overrule the judgment of two successive Governments of Scinde in my favour.

On this there can be no mistake; the documents are in the Blue Book. On the 10th of October

October 1846, Sir Charles Napier wrote, by his secretary, to the Bombay Government, forwarding them the despatch of the Governor General relative to me, and informing them that I was then in Bombay, acting under the orders of Major Blenkins, the prize agent, and therefore subject to their jurisdiction: also calling their attention to the fact, that Aga Mahommed Rahim was in Bombay, and therefore stating that it was advisable that they should institute an inquiry.

On the 4th of November the Bombay Governor and Council declined, as I have stated, to institute that investigation.

Is it to be endured, that the accused person, whose accusers wait until their charges cannot be proved, is to be told by them, you have let the time of effective investigation pass by?

P. 37.—"Why did he not insist on an inquiry?"

Because I have no power of "insisting" on anything. I have shown my earnest request that the matter might be judicially tried in the civil court, and Sir Charles Napier thought my answer complete.

After all, what was it? Not a single specific charge was brought against me. My banker, when refusing to pay my order, writes to inform the Government he has a large sum of money of mine in his hands, and he insinuates that I may possibly have acquired it improperly. I am asked to account for the possession of so much money. I did so. I am told by Sir Charles Napier, the Governor, that I have done so to his satisfaction; and then I am solemnly asked why I did not insist upon an inquiry.

P. 40.—"Here he again discredits his own witness. It was next to impossible Captain Brown could be wrong on such a point. It was his custom to write down the orders he received from Sir Charles's own mouth. The letter of the Government of India is endorsed in Captain Brown's handwriting. "The moonshee says he made it in trade. His Excellency has permitted the moonshee to proceed to Bombay, where his old partner in trade now is." The draft letter is also in Captain Brown's writing.

This exceeds, if possible, all the other comments in unfairness. Captain Brown was not my witness. I did not discredit Captain Brown. I did point out that, when Captain Brown wrote a letter of the 17th May 1847, in which he merely writes, "The moonshee says he made most of it in trade." It was perfectly absurd to use this, as if it contradicted my statement that I had been originally left money by my father.

Captain Brown obviously refers to a former statement of mine, and it is perfectly immaterial whether he wrote it from the dictation of Sir Charles Napier or not; if so, Sir Charles Napier referred to the result of former inquiries.

These are the facts. Captain Brown writes a letter, in which he exqressly says that I was then in Bombay, and in which he also writes:

"The moonshee declares that the money so remitted has been mostly made in trade.'

It is perfectly plain that he refers, and refers from memory, to a former statement of mine. It was also plain that any inquiries made of me had been made some time before, and I am said to discredit my own witness, because I pointed attention to this palpable fact.

It is also perfectly plain, upon the letter itself, that Captain Brown had not taken a very accurate note of my affairs. He manifestly confounded my partner in trade with my banker in Bombay. But, in fact, the absurdity of the accusation becomes manifest when it is recollected that in September following I handed to this very same Captain Brown a full and detailed statement, showing the money I got from my father, and how I had largely increased it in trade.

Did either he or Sir Charles Napier then say that his statement was inconsistent with anything I have previously told them?

I might ask, how was I to make money in trade unless I had first some money to trade with?

P. 41.—"Not a word about his patrimony."

This means, that in my examination, or rather cross-examination, in the Supreme Court, I did not mention the money left by my father. Very few words will explain the unfairness of this and all the comments upon this examination, the real character of which is entirely misrepresented.

When Aga Mahommed Rahim became insolvent, I was obliged, against other creditors, to establish my right to some premises, which in 1845 he made over to me in mortgage. My title was disputed, on the ground that when he made the mortgage he was in bankrupt circumstances, and that I was aware of it.

No question at all was raised as to his owing me the money; and of course, if he did so, it was quite immaterial where I got it.

In the end of 1846 I appointed Mr. Arthur my attorney to look after my interest in the suits then pending in Bombay as to Mahommed Rahim's property. He took the usual proceedings to establish my claim under my mortgage, and made an affidavit, setting out the deeds relating to it.

On the 29th of April 1847 the opposing parties obtained an order of the Court to exhibit to me written interrogatories.* These interrogatories were prepared by their counsel as usual, and I was ordered to give a full reply; and I had no right, even if I wished it, to go into matters about which I was not asked.

My answer to these interrogatories, prepared by counsel in the usual way, is set out at full in the Parliamentary papers of 1853, p. 412. I now have reason to know that the course of the interrogatories was suggested by a member of the Bombay Government. In them I was not asked one word about inheriting anything from my father, but I was asked what salary I had, and whether I had received any perquisites of office independently of my salary, or any other emolument. In reply to this question I adverted to the presents I had received at Lahore. Without doing so I could not have answered the questions with truth. I said nothing about my patrimony, because I was asked nothing about it.

The perversion of this examination consists in this, that it is represented as if it was a voluntary affidavit made by me, in which I came forward to show how I acquired the property I possessed. It was no such thing. There was no such inquiry in the cause, but certain written questions were put to me, to which I gave written answers, truthfully and honestly, having nothing to do but to answer the questions put.

I have now no doubt that the question so put to me, and which I have already fully set out, was put to me at the instance of a member of the Bombay Government, in the hope that I would have been entrapped to admit the receipt of money or perquisites, under circumstances which would have involved me in the charge of accepting bribes.

I see that it is frequently asserted that this examination is inconsistent with my statement to Captain Brown. For such an allegation there is not one particle of foundation. I defy any one to quote a single answer inconsistent with anything I elsewhere said. Mr. Frere does not do so. I did not, it is true, I could not answer questions, not put to me, nor did I enter into a history of transactions as to which I was not questioned, and which had nothing to do with the suit in which I was examined. At all events, my duty was merely to answer the questions put to me, and I did so.

> P. 44.—"And yet, in reply to the Government of India, dated four days before this, in forwarding the moonshee explanation, Captain Brown is not directed to state whether his Excellency considered it satisfactory or not."

If this means anything, it means an attack upon Sir Charles Napier, and one conveying a very serious imputation. Sir Charles Napier is desired by the Governor General to call for an explanation from me. He does so, and he receives it.

On the 10th he forwards that explanation; and on the 14th, after having so received my explanation, he writes as follows to the Governor General of India:

"From his Excellency Sir C. J. Napier, K.C.B., to the Right Hon. the Governor General of India in Council.

"Kurrachee, 14 September 1847.

"My Lord,—I have the honour to enclose to your Lordship the memorial of my moonshee, Ali Akbar Khan Bahadoor, together with a copy of a letter written to Lieutenant Colonel Outram, my predecessor as political agent in Sind.

"From the moment of my arrival I found the moonshee all that Lieutenant Colonel Outram's letter says of him. I have no hesitation in saying, that for the five years during which I have commanded in Sind, Ali Akbar has been of the greatest service, and I feel under very great obligations to this excellent public servant, in whom I have very great confidence, and repeat Lieutenant Colonel Outram's words, 'It is with truth, and in mere justice, that I declare I never have witnessed services, by any native Indian, more zealous, more able, or more honest than such as Ali Akbar has rendered to Government under me for five years.' He has been attacked by a party inimical to me, and merely, I believe, because he is my moonshee. I have not taken his part. I left him to defend himself, and their ill-natured attacks have died a natural death. I now feel it to be my duty to recommend this able and faithful public servant to your Lordship in Council, and I hope that his petition may be granted, to be allowed to retire from the service on 200 rupees a month, this being half his present pay.

"If his length of public services be short, it will be recollected that it has been through the difficulties and dangers of the Affghan and Sind wars, a time of incessant exertion, including the dangers of two general actions, in which he conducted himself bravely. If the prayer of Ali Akbar's memorial be granted, I can assure your Lordship in Council that few things would be more grateful to me.

"I have, &c.
(signed) "*C. Napier*,
"Lieutenant General, Governor of Sind."

Mr. Frere's comment is quoted on this. Does he mean by this, that when Sir Charles Napier wrote to the Governor General he was not satisfied that I had not been making money by dishonest means; that, in fact, Sir Charles gave me a false recommendation?

If Mr. Frere does not mean this, may I be permitted, with great humility, to inquire what he does mean, especially as I see that in another marginal note he says that Sir Charles Napier carefully avoids expressing an opinion upon my case.

If

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* *See* page 8.

If any person really believes that Sir Charles Napier was capable of writing this letter while he had an unfavourable opinion of my explanation, I fear I have but little chance of standing better in his opinion than my old master and friend, of whose esteem and regard I shall ever be proud. But I say with confidence, that this letter written on the 14th is conclusive evidence that Sir Charles Napier was satisfied with my explanation on the 10th.

But this is not all. When Mr. Frere thus insinuates that Sir Charles Napier was not satisfied, he had before him, in my letter to Sir James Melvill, upon which he at the same time comments, the following extracts from a speech of Sir Charles Napier, at a public dinner given to him in Bombay:

"In the wars of Sind there were some officers who did more for me than I did for them. The first I shall mention is Captain Brown, of the Bengal army, who is now dead; a braver and better soldier never lived. Of the second I shall not say anything, as he is a relative of mine; I mean Major M'Murdo. But the third of whom I shall and will speak is my moonshee, Ali Ackbar; this man stood by me in the day of danger; he was of the greatest assistance to me throughout the campaign in Sind; he was my tongue; and I now find him in disgrace. I am not aware upon what information the Government has acted. I charge no man with injustice, but I have a right to say that Ali Ackbar did more for the conquest of Sind than a thousand soldiers could have done. I will never abandon a brave soldier; and after all Ali Ackbar has done, I find him here in disgrace; and, gentlemen" (said the general with emphasis, and striking the table with his hands), "I may say he had no trial."

It may be said that Sir Charles Napier's testimony is worth nothing; but no misrepresentation can make out that it is not given distinctly, clearly, and decidedly in my favour.

"Ali Ackbar throughout seems to be fond of discrediting his own witnesses. Mr. Pringle could not be mistaken in this point. So reported by the Captain of Police.
"Ali Ackbar is fond of discrediting his own witnesses."

In Mr. Frere's letter he actually numbers Aga Mahommed Rahim among my own witnesses (p. 30), whom I discredit!—that is the man upon whose information the whole accusation rests! he is my witness! and when I contradict him, I discredit him.

After this I need scarcely comment on his unfairness as to Mr. Pringle.

The statement of Mr. Pringle, on which I observed, was, that some of the Hyderabad merchants, in whose names the bills were drawn, denied all knowledge of them.

Mr. Pringle, the Chief Commissioner of Scinde, investigated the matter. He wrote a letter exculpating me. Upon one, and only one, point he thought the evidence not satisfactory; and because I venture to show that this originated in a mistake into which he had fallen, I am told that I discredit my own witness, and that that witness is Mr. Pringle.

It would be scarcely worth noticing this miserable cant if I did not find it repeated several times, and actually made the ground of my condemnation.

It is necessary, very briefly, to show what were the facts in this instance.

The documents which were before the eyes of Mr. Frere when he wrote these comments establish a perversion of the obvious facts, which would only have originated in his overlooking the plainest statements.

Mr. Pringle says in his letter, a further evidence, which it would be desirable to procure to complete the investigation, but which is not attainable, is that of Hajee Ali, and of the parties to some of the bills.

"The former individual is said to have left this part of the country, and his present place of residence is not known. The latter decline giving evidence on the subject. This may, perhaps, be attributable to a feeling that the exposure of pecuniary transactions of this nature would be a breach of mercantile confidence; but the denial of any knowledge of the bills on the part of the Hyderabad merchants is certainly an unsatisfactory feature."

It will be seen that Mr. Frere, in his marginal note, refers to the report of the Commissioners of Police.

The whole matter will be perfectly understood by a reference to the documents published in the Parliamentary Papers of 1853, with reference to my dismissal.

When Mr. Pringle was instructed to make inquiries in 1848, he obtained from the Treasury in Scinde a return of the bills remitted to my account to Aga Mahommed Rahim, and the names of the parties to them.

On the 11th of July 1848 he forwarded the names to the Commissioners of Police, with a direction that they should ascertain the residences.

On the 26th of July the Commissioners of Police reported what they had ascertained as to the residences. It appeared that four only resided at Hyderabad:—

1st. Hajee Mahomed Hussein.
2d. Aga Mahomed.
3d. Seyed Hussein.
4th. Mirza Hussein.

Of these four, Hajee Mahomed Hussein was the person who had made the affidavit for me in December 1846. In that he had given the fullest information as to having obtained for me the large amount of bills on which his name appears. The other three were, therefore, the persons supposed by Mr. Pringle to be Hyderabad merchants, and stated by the police to have denied knowledge of the bills.

It appears by the Accountant General's list of bills that the bills drawn by them were as follows:

	Rupees.
Murza Hussein, 25th May 1843 - - - -	1,000
Seyed Mahomed, 17th July 1843 - - - -	350
Aga Mahomed, 18th July 1843 - - - - -	3,200
Making in all - - - *Rs.*	4,550

There are, I may observe, mistakes as to some of the names; but I deal with the report of the police, which states that these four individuals, and these only, lived at Hyderabad, and of them only were they directed to make inquiries. To the three persons I have named, and these only, can the expression of Mr. Pringle as to "the Hyderabad merchants" apply.

If I had an opportunity of explaining, I would have shown Mr. Pringle that those persons were not merchants at all, but persons in the employment of Hajee Mohamed Hussein.

After having ascertained their residence, the following letter of the 24th July was addressed, by desire of Mr. Pringle, to the Commissioners of Police:—

"The Commissioners request that you will direct the parties specified to be questioned with reference to the bill remitted by each respectively, as to whether it was transferred to any other party, and under what circumstances, and how endorsed."

On the 21st of September the Commissioners of Police were requested to expedite their reply.

On the 4th of October he wrote the following letter:

"Sir,—In reply to your letter, dated 21st September, I have the honour to state that the bill drawers make every objection to furnish the information required, and that it will be impossible for the Lieutenant of Police at Shikarpoor to obtain the same without using coercion.

"The like difficulty is met by the Lieutenant of Police at Hyderabad, the parties there denying all knowledge of any bills having been drawn in their names.

"I have, &c.

"*Wm. Brown*,

"Captain of Police."

These facts do not rest on any inference or statement of mine. They are all taken from the official documents published in the Parliamentary Papers of 1843.

It would be very easy for me to show that the police inquiries were not very accurately conducted; that, in fact, the police were mistaken as to names and persons. But take them as they are, and they amount to this: that persons in whose favour altogether bills were drawn for about 400 *l.* or 500 *l.*, in the summer of 1843, are said to have denied, when questioned by the police in August 1848, that they knew anything about the bills.

The only answer attempted to be given to this is, that I am audaciously impudent, and am discrediting my own witness, Mr. Pringle, who could not be mistaken; and this is the comment of a man who had these documents before his eyes.

If such an observation was to be made at all, seeing it is Mr. Frere who discredits his own witness against me, he quotes Mr. Pringle as infallible—"Mr. Pringle could not be mistaken"—but he refuses to accept the conclusion in my favour, to which, after the fullest investigation, Mr. Pringle deliberately arrived.

It is, perhaps, worthy of note, that there is no report from the officer who made the inquiries at Hyderabad. The whole statement is a very short one from the Commissioners of Police, that the Police Lieutenant at Hyderabad could not get information, as the parties denied knowing anything about the bills. It is the hearsay repetition of a hearsay statement.

Upon statements like this I have been condemned. Carefully examined, the statement amounts to nothing more than this: that the parties refused information, telling the police that which parties refusing information are very apt to do, that they knew nothing about it.

P. 51.—"The latter decline giving evidence. They must then have been present."

This is an assertion by Mr. Frere, that when Mr. Pringle states that "the Hyderabad merchants decline giving evidence," he meant that they came before him and refused.

And this assertion is made on the face of the documents I have quoted, sent by Mr. Pringle with his report, and which, if they had been looked at by Mr. Frere, would have made it as plain as words could do, that he referred to the letter of the Commissioners of Police; and that he had never even asked one of these parties to appear before him.

And

And also, in the face of a reference by me to these documents, as showing the whole foundations of the statement, it is an almost incredible inadvertence in Mr. Frere to have so entirely overlooked the documents accompanying Mr. Pringle's report, one glance at which would have saved him from so gross a perversion of its meaning.

> P. 51.—"No; there were many other names, *vide* the Accountant General's list· Ali Ackbar does not seem to know of the Accountant General's list."

Ali Ackbar did know of the Accountant General's list; but Mr. Frere does not seem to know of any of the documents in the case.

It is true that there were many other names; but it is also true that the police were desired to report the residences of the parties whose names were so given, and the police reported of them as living at Hyderabad.

It is also true that the statement of the denial of the bills applied only to the three I named, as the only three that were mentioned as resident at Hyderabad. Mr. Frere, with these facts before him, implies that there were many other Hyderabad merchants who denied knowledge of the bills.

> No. 2, p. 53.—"Before this man became a fraudulent bankrupt, he declared that Ali Ackbar had no property on going to Scinde. The story he told afterwards seems to have been arranged between him and Ali Ackbar, when the latter had power over him as a chief creditor."

This is not only a perversion, but a direct inversion of the truth.

It was in September 1847 that he gave the account which showed that I had inherited a patrimony.

It was on the 26th July 1848, when he was examined as a fraudulent bankrupt, that he gave that evidence on the trial in the Supreme Court which, it is alleged by Mr. Frere, was to the effect that I had no property on going to Scinde.

Yet Mr. Frere, in the face of these dates, declares that the evidence of July 1848 was given before he became a fraudulent bankrupt, and the letter of 1847 arranged afterwards with me.

But this is not all. Aga Mahommed Rahim never gave the evidence which is here represented. On the 26th of July 1848 he was examined as one of the witnesses on the trial relating to the mortgage, which I have already mentioned. On cross-examination at the investigation, I believe, previously referred to, he was asked as to my property. The trial took place before Chief Justice Sir Erskine Perry and Sir William Yardley. The Chief Justice said these questions were irrelevant; that it did not matter how I acquired my money, as I had lent it to Mahommed Rahim, and he was honestly my debtor. The question was put, and the Chief Justice took down the note of the evidence, which the most accurate judge would take of evidence he considers wholly immaterial. It was this—"When he went to Scinde he had no property of any amount."

Sir William Yardley also took a note, and it was this—"Ali Ackbar had some money of his own, not so much as a lac."

The counsel engaged in this case took a note, and it was this:

"Ali Ackbar had some money of his father's; he had not a lac of rupees when he went to Cabool."

Mr. Frere, of course, only saw the note of Sir Erskine Perry. Application was made on the part of the Government for extracts from the proceedings.

The note of the evidence as taken by Sir Erskine Perry was obtained; that by Sir William Yardley was not. But Mr. Frere had before him the evidence which showed that the Aga was brought out of gaol to give that evidence; that in the very sentence before that quoted, he stated that he had not a rupee in the world, and that this was nearly three years after he made the fraudulent attempt to abscond, and yet he states that he gave this evidence before he became a fraudulent bankrupt.

There is one way, and only one way, of accounting for this extraordinary mistake of Mr. Frere's.

In the Blue Book of 1853 (p. 463) there is published a minute of Mr. Willoughby, in which occur the following comments on the Aga Mahommed:—

"As our Resident has justly observed, his exculpatory letter is dated the 3rd July 1847, and his affidavit in the Supreme Court is dated the 25th of July 1843." It does not need a reference to the minute of Lord Falkland to see that this date, 1843, is a mistake, either of the printer or the copyist, for 1848. No one who had read the documents with the most common-place attention could be misled by it.

But it does seem possible that Mr. Frere, in his haste, was led astray by this palpable blunder, otherwise his mistake is wholly inexplicable.

It is not my object to comment upon these minutes, but I may observe that the testimony referred to was not an affidavit, but was evidence orally given by the witness, of which a note was taken by the judges.

When the notes of Sir Erskine Perry and Sir William Yardley are compared, there is, morally, no difference between them. Sir Erskine Perry takes down, "When he went to Scinde he had no property of any amount."

Sir William Yardley, "He had some money, but not so much as a lac of rupees."

And the note of counsel is, "He had money of his father's, but not a lac of rupees."

Lord Falkland, who had never an opportunity of knowing how the matters really stood, lays the greatest stress upon what he supposes to be the evidence of Mahommed Rahim.

There are similar marginal notes appended to a letter addressed by me to Sir James Melvill; they are very nearly repetitions of these.

I think it right, however, to refer to them.

> P. 58.—"The Bombay Government did move in this matter, but Sir C. Napier declined to interfere."

Sir Charles Napier did twice interfere, and twice called on me to explain.

But this does not touch the point I urged, which was this: To this hour no direct accusation has ever been made against me. No answer has ever been given to this.

I have been condemned and dismissed only because I was the owner of money, and because the Bombay Government choose to treat this bare fact as proof that I had done something wrong, though they would not even suggest when, how, or where I had done so, or what was the wrong.

> P. 60.—"Mr. Pringle only judged on the evidence before him. Government had additional evidence before the Supreme Court."

I have already shown that there was not one particle of evidence before the Supreme Court to reflect unfavourably upon me.

But if Government acted on this, obtained in the manner I have mentioned, was it fair or just to me to act on it without giving me the opportunity of explaining or answering it?

> P. 61.—"These allusions and insinuations with respect to counsel appear a little indecent, and are quite irrelevant."

I do not admit that it is indecent to tell the truth, even though it may affect a member of the Government of Bombay; and so far from being irrelevant, it was most material to me to show the origin and object of the questions put in the Supreme Court.

It is of the most vital importance, when it is recollected that, in September 1847, I have given a full statement with reference to the money left by my father in the hands of Mahommed Rahim. That statement was, in July 1848, known to the members of the Government of Bombay.

Why, then, was not Mahommed Rahim asked as to this by those who, unknown to me, were trying to get evidence against me?

The reason is plain. In answer to the very first question put on the subject, he said that Ali Ackbar had money of his father's, or had property, though not so much as a lac of rupees.

This exactly confirmed my statement, which was, that I had 35,000 rupees.

Of course, the inquiry was pursued no further.

So far from irrelevant, it is most material for me to show that persons most anxious to convict me, and with full information of all I had stated, did give suggestions for this cross-examination.

> P. 61.—"This tells against Ali Ackbar, for, if honestly acquired, why should he object to the questions which shall show this?"

Where is it stated that I objected? If ever my counsel objected to irrelevant evidence, does this furnish the slightest ground for this observation; but, in truth, the objection came from the judge.

> P. 61.—"It seems to me that to be engaged in commerce itself unfitted Ali Ackbar to hold the place he did under the Government of Scinde. He must occasionally have sacrificed his private advantage, or that of the public service."

This comment is the observation of a person determined, at all events, to condemn me.

Where was the conflict between my interests as a trader and my duties as moonshee?

> [P. 62.—*See* the Captain of Police's report, Blue Book, p. 405.]
>
> "The parties, or some of them, to whose names several bills were drawn, were actually examined by the police officers, and denied all knowledge of the transaction. This fact is totally inconsistent with Ali Ackbar's account of the affair."

I have already answered this. But let this be compared with the comment previously made.

In that Mr. Frere ignored altogether the letter of the Captain of Police, and actually stated that the parties were present at the examination by Mr. Pringle, and then refused to give evidence.

> P. 62.—"This appears to me most important, and to be confirmed by all the circumstances of the case."

This refers to the supposed statement of Mahommed Rahim, that when I went to Scinde I had little or no property.

I have already shown that, in point of fact, no such statement was made.

Mirza Ali Ackbar Khan Bahadoor.

From Secretary East India Company to *Mirza Ali Ackbar*,
dated 26 May 1858.

Sir,

I HAVE laid before the Court of Directors of the East India Company your letter of the 7th instant, with its enclosures; and I am commanded to inform you in reply that the Court will forward them to the Government of Bombay, for any observations which these documents may suggest.

I have, &c.
(signed) *J. D. Dickinson*,
Secretary.

From *Mirza Ali Ackbar* to *J. D. Dickinson*, Esq., Secretary to the Honourable Court of Directors of the Honourable East India Company.

Sir, 7 June 1858.

I BEG to acknowledge the receipt of your letter of the 26th ultimo, in which you inform me that my letter of the 7th, with its enclosures, will be forwarded to the Government of Bombay, for any observations which these documents may suggest.

I beg most respectfully to remind the Honourable Court, that neither my letter nor its enclosures contained any matter upon which any further inquiry could be called for. I showed from the documents upon which Mr. Frere formed his opinion, that the opinion was unjust; and as all the facts were fully before the Honourable Court, I had hoped that the members of the Court would have felt themselves in a position at once to decide between me and my accusers.

I have further to ask the attention of the Honourable Court to the circumstances under which I addressed them on the 19th January 1856. Mr. Frere wrote the report of which I complain, containing statements most injurious to me. For more than two years this paper, so strongly and so unjustly assailing my character, was kept secret. Although it affected my reputation and my livelihood, no copy of it was ever given to me, "for any observations that document might suggest"; but upon this libellous statement a decision was come to depriving me of that pension to which, having honestly served the Government, I have a right.

But this was not all. In forwarding that document to the House of Commons, the Honourable Court caused it to be published to the world. They did so without my ever having seen it, without any opportunity being given me of accompanying it with the answer which so easily proves it a monstrous injustice, and thus the apparent sanction of the Honourable Court and the House of Commons is given to this libel framed against me in secret, acted on behind my back, and finally published to the world without any opportunity being given me of defending myself.

I complained of the injustice of publishing this document, without giving me the opportunity of answering it; I may perhaps still hope that the Honourable Court may find some means of correcting this injustice.

My original memorial was presented to the Court of Directors on the 27th March 1855. I was desired to send it through the Bombay Government. On the 19th of June, I did so, and in a letter dated 13th May 1857, Mr. Secretary Anderson conveyed to me the Honourable Court's order, so that an interval of two years elapsed before I obtained a reply to my application for redress.

If another delay of more than two years is to follow the present reference to the Bombay Government, I am sure the Honourable Court will feel that I will be very cruelly treated.

It is with the deepest respect I submit these observations to the Honourable Court, in the hope that, as they have published to the world the most unjust charges of Mr. Frere, they will at the earliest possible moment take some steps to consider my refutation of them.

I have, &c.
(signed) *Mirza Ali Ackbar*,
Khan Bahadoor.

(No. 16.)

From the Court of Directors to the Government of Bombay, dated 16 June 1858.

We transmit to you herewith, for such remarks as it may suggest, the accompanying copy of a Memorial (with Enclosures) from Mirza Ali Ackbar, formerly moonshee to Sir Charles Napier, when Governor of the Province of Scinde.

We are, &c.
(signed) *F. Currie.*
W. J. Eastwick.
&c. &c.

To the Honourable Lord *Stanley*, M.P., Secretary of State for India, &c. &c.

My Lord, 28 September 1858.

I BEG most respectfully to call your Lordship's attention to a claim on my part, which has been for some time pending before those intrusted with the Government of India.

On the 7th of May last, I had the honour of addressing to the Court of Directors a letter on the subject of that claim. It had been previously pressed upon them without success; but the documents, for the first time disclosed in a recent Return to an Order of the House of Commons, appeared to me clearly to entitle me to a reconsideration of the subject. In this view, I may presume that the Court of Directors, to some extent at least, concurred. On the 24th of May, I received a letter from the Secretary of the Court, informing me that my letter, and its enclosures, would be transmitted to the Government of Bombay, for any observations they might see fit to offer.

House of Commons Papers, 1858. Return to Order of March 18.

Before I have received any further answer, the measure has become law, which has placed the Government of India directly under Her Majesty the Queen; and referring to my former correspondence with the Honourable Court of Directors, and having, after an interval of three months, received no further communication, I now venture to call your Lordship's attention to the claim which I have urged, with a view of obtaining an early, and I trust a favourable decision.

In doing so, I request your Lordship's permission very briefly to recapitulate the nature of my claim, the circumstances out of which it arises, and to refer your Lordship to the official documents which contain the information relating to it.

My claim arises from this, that having been for a period of nine years employed by the British Government in the office of moonshee in Scinde, I was, on the 1st of June 1849, unjustly and arbitrarily dismissed. I was deprived of a pension, to which my services fully entitled me, and to which Sir Charles Napier, in 1847, most earnestly recommended me, and which Mr. Pringle, in 1848, also advised I should receive.

If, my Lord, I can establish the fidelity of my service, and the injustice of my dismissal, I claim the pension, which but for that unjust dismissal I would unquestionably have received.

The facts are not many, and it may be convenient to your Lordship that I should bring them before you in one view.

In 1830, I was employed as a moonshee on the staff of Lord Keane, the General commanding the army then about to proceed to Scinde and Affghanistan. I was present with his Lordship through the first Cabool campaign. On returning with him in 1839, I became attached to the staff of Colonel Outram, then the British Resident in Scinde. Up to the period of his quitting the Residency in 1842, I acted under him as chief moonshee, first to the Agency of Lower Scinde alone, afterwards to that Agency united with the Agency of Upper Scinde and Beelooch-istan. My services were continued under Sir Charles Napier until he left Scinde in 1847; they were then continued under Mr. Pringle up to the period of my suspension on the 2d of June 1848. That suspension was followed by my dismissal exactly a year afterwards. I have thus, my Lord, to say, that during a period of nine years, I devoted the best part of my life, my time, and my talents, whatever they may be, to the service of the British Government in Scinde.

Even at the hazard of being tedious, I must ask your Lordship's attention to the testimonies I received from those under whom I acted.

Colonel

Colonel Outram, on leaving Scinde, wrote me the following letter:—

"To *Ali Ackbar*, Chief Moonshee, Sukkur Agency.

"My Friend, "Bombay, 23 November 1842.

House of Commons Papers, 1853, p. 473.

"I DID not give you a certificate of conduct, like the others of the native establishment, previous to my departure from Sukkur, because I considered that your superior merits deserved a more distinguished mark of my sense thereof, and that in the shape of a letter addressed to yourself after my arrival at Bombay, it would be more prized by you.

"It is with truth and mere justice to you, Ali Ackbar, that I declare I never witnessed services by any native of India more zealous, more able, or more honest than such as you have rendered to Government, under me, as head moonshee to the Lower Scinde Agency, for three years past, and to that of Upper Scinde, and Beeloochistan united thereto, for 15 months past, during which you have shared all the exposure and arduous services I myself have had to undergo, and have aided me in many important services, especially in bringing to light the peculation and bribery which prevailed in the native establishment of Upper and Lower Scinde, thereby braving the enmity of the most powerful and influential natives, who have not failed to endeavour to injure you to the utmost of their power, but whose machinations I trust you will ever be able to defeat, as heretofore, by your integrity, which has not yet been justly impugned.

"It will give me great pleasure to have it in my power to be of service to you, and I shall be always most happy to hear of your welfare; I request, therefore, you will write to me from time to time. Rely upon me, Ali Ackbar, to be your sincere friend and well-wisher.

(signed) "*J. Outram.*"

This, my Lord, was the opinion of Colonel Outram, expressed, as you will perceive, in no ordinary language. I make two extracts from Despatches of Sir Charles Napier; one written after the battle of Meeanee, the other after that of Hyderabad. From the battle field of Meeanee, he thus writes:—

"Nor will I omit to mention the moonshee, Ali Ackbar, an Arab, who exhibited the coolest courage, and attended me everywhere."

Despatch of Sir Charles Napier, 18 February 1843.

After the battle of Hyderabad, his testimony was equally emphatic:—

"I will not close the list of those to whom I am indebted without mentioning that brave and indefatigable Arab gentleman, Ali Ackbar, to whose ability and activity I am much indebted."

Despatch, 24 Mar. 1853. Sinde Supplementary Papers, p. 51.

Again, when the campaign was over, he repeated his testimony to the services I had rendered, not only in the field, but in political matters. On the 21st of June he thus wrote to the Governor General:—

"I beg to certify to the Committee that Ali Ackbar, the moonshee to the Government of Scinde, has exhibited the greatest gallantry in battle, both at Meeanee and at Hydrabad, and has in every way, by his incessant labours in obtaining information on every point, contributed as much, if not more, than any individual to the success of the campaign in Sinde. I most strongly recommend him for the Order of Merit.

Ibid. Letter of Sir Charles Napier, 21 June 1843.

(signed) "*C. Napier*, Governor."

"Government House, Hydrabad,
21 June 1843."

At a little later period, in the year 1844, Lord Ellenborough, in consideration of what his Lordship and Sir Charles Napier were pleased to consider my distinguished services, conferred upon me the rank of Khan Bahadoor.

House of Commons Papers, 1853, p. 474. Letter of Lord Ellenborough in Council, 24 March 1844.

I preserved the good opinion of Sir Charles Napier to the last. On the 14th of September 1847, when I had been nearly five years in his service, he thus wrote to the Governor General:—

"From his Excellency Sir *C. J. Napier*, K.C.B., to the Right Honourable the Governor General of India in Council.

Blue Book, 1853, p. 474.

"My Lord, Kurrachee, 14 September 1847.

"I HAVE the honour to enclose to your Lordship the memorial of my moonshee, Ali Ackbar Khan Bahadoor, together with a copy of a letter written to him by Lieutenant Colonel Outram, my predecessor as Political Agent in Scinde.

"From the moment of my arrival, I have found the moonshee all that Lieutenant Colonel Outram's letter says of him. I have no hesitation in saying, that for the five years during which I have commanded in Sinde, Ali Akbar has been of the greatest service, and I feel under very great obligations to this excellent public servant, in whom I have great confidence, and repeat Lieutenant Colonel Outram's words: 'It is with truth and in mere justice that I declare I have never witnessed services by any native of India more zealous, more able, or more honest, than such as Ali Akbar has rendered to Government, under me, for five years. He has been attacked by a party at Bombay inimical to me, and merely, I verily believe, because he is my moonshee. I have not taken his part; I left him to defend himself, and their ill-natured attacks have died a natural death. I now feel it my duty to recommend this able and faithful public servant to your Lordship in Council, and I hope that his petition may be granted, to be allowed to retire from the service on 200 rupees a month, this being half his present pay.

"If his length of public service be short, it will be recollected that it has been through the difficulties and dangers of the Affghan and Scinde wars, a time of incessant exertion, including the dangers of two general actions, in which he conducted himself bravely.

"If the prayer of Ali Ackbar's memorial be granted, I can assure your Lordship that few things would be more grateful to me.

"I have, &c.,
(signed) "*C. Napier*, Lieutenant General,
"Governor of Scinde."

These, my Lord, are official testimonies to be found in the records of your Government. I will perhaps be pardoned if I refer to one from Sir Charles Napier, which, though not official, is surely not without its weight.

After my suspension from office Sir Charles Napier was entertained at a public dinner in Bombay. That great man, who surely had the best opportunities of judging of my conduct while in his service, was pleased thus to express himself of me:—

Parliamentary Paper, 1858, p. 64.

"In the wars of Scinde there were some officers who did more for me than I did for them. * * * The third of whom I shall and will speak is my moonshee, Ali Ackbar. This man stood by me in the day of danger; he was of the greatest assistance to me throughout the campaign in Scinde; he was my tongue, and now I find him in disgrace. I am not aware upon what information the Government act, but I have a right to say, that Ali Akbar did more for the conquest of Scinde than a thousand soldiers would have done. I will never abandon a brave soldier, and after all that Ali Ackbar has done I find him in disgrace; and, gentlemen, I may say he has had no trial."

This report is taken from a newspaper account of the speech of Sir Charles Napier, and Sir Charles Napier himself told me that this report did not adequately convey the testimony he had borne to me. Your Lordship may well believe that those words sunk too deep in my mind to be forgotten by me.

These testimonies, my Lord, will tell you how I stood at the end of eight years' faithful service. Mr. Pringle succeeded Sir Charles Napier in the administration. During the year in which I was permitted to serve him, I retained his confidence and esteem.

I have now to state the circumstances under which an officer thus trusted and honoured was dismissed from the Government.

In the course of the years 1842 and 1843 I had remitted to Mahomed Rahim, a merchant banker in Bombay, sums of money, amounting in all to about 10,000 *l.* In 1845 I found the circumstances of this banker becoming bad, and I demanded my money. In a desperate attempt to evade my demand, he wrote a letter to Sir Charles Napier, through the Government of Bombay, pretending that he was afraid to pay me this money lest it might have been Government money which I had misappropriated.

The man immediately afterwards became bankrupt. He was thrown into gaol. He fell from a high and honourable station, and the history of his dealings forms one of the leading cases of fraud in the mercantile history of Bombay.

Judicial Cases by Sir E. Perry.

One would have thought that the motive of his letter was too transparent, and that any Government would have treated it with contempt. The allegation that

I could

I could have misapplied Government money was absurd; I never had one penny of Government money in my hands. But I cannot conceal from myself that for some reason or other I had incurred the enmity of persons who were able to prejudice against me the Government of Bombay. When in 1845 I was first shown the letter to Sir Charles Napier, I told his Excellency at once that of the 10,000 *l.* a little more than 6,000 *l.* was my own; that of this a part had been left me by my father, a part made out of my gains and savings while attached to Lord Keane, and the rest acquired by a successful partnership in trade.

Sir Charles Napier was satisfied. But indignant at the imputations cast upon me, I requested that I might be put upon my trial upon any charge which would lead to an investigation of the whole matters. His Excellency intimated that no further proceeding was called for. Letter of Ali Ackbar's to Captain Brown. Blue Book, 1853, p. 397.

Perhaps your Lordship will think that, considering the character of Mahomed Rahim's letter and the obvious motive with which it was written, Sir Charles Napier took the course which was due to me as an officer of Government. The matter was one exclusively for his decision, and when he was satisfied it ought to have been at rest.

I must, however, ask your Lordship's attention to the steps by which some person connected with the Bombay Government has followed out towards me a malignant and persevering plan of enmity and persecution. I do not wish to repeat this statement, and I will make no comment upon the facts which suggest it.

The letter of Mahomed Rahim was addressed to Sir Charles Napier, the Governor of Scinde; Scinde was then a Government, entirely independent of Bombay. That letter was, however, sent to the Court of Directors, not by Sir Charles Napier, but by the Government of Bombay; with what remarks or suggestions it was accompanied I have no means of knowing, but it was reported to the Court of Directors by the Government of Bombay. Minute of Lord Falkland, 24 April 1849. Blue Book, 1853, p. 454.

In consequence of this, a suggestion was made from the Court to the Governor General, that he should call the attention of the Governor of Scinde to the matter; accordingly, the Governor General wrote to Sir Charles Napier to make inquiries, but to do so in such a manner as to cast no reflection upon me. Ibid.

This letter from the Governor General is dated the 26th of September 1846. Memorial of Ali Ackbar. Parliamentary Papers, 1858, p. 11.

It so happened that when this letter reached Sir Charles Napier I was engaged in official business in Bombay. On the 18th of October 1846, Sir Charles Napier wrote to the Government of Bombay, suggesting that, as I was then in Bombay, under the jurisdiction of the Bombay Government, and as Mahomed Rahim was there also, an investigation into the whole matter should be instituted by the Government of Bombay. Ibid, p. 12.

Had this been done, whatever might have been the result, I would at least have been treated with fairness. But on the 4th of November, the Bombay Government wrote to Sir Charles Napier, stating positively that they could not interfere, and that the matter could only be investigated by the Government of Scinde. Ibid, p. 12.

I am compelled, my Lord, to state that immediately after this I was engaged in litigation in the courts of Bombay, in establishing my claims against the estate of Mahomed Rahim. I have already stated that which I now repeat, that which if denied I am perfectly ready to prove, that in the course of this litigation, in the year 1847, a member of the Bombay Government applied to the counsel conducting the case against me so to direct their examinations as to elicit information that might be used to my prejudice, for the purposes of the Government. Letter of Ali Ackbar to Sir J. C. Melvill, 27 March 1855, Parl. Paper, 1858, p. 61.

I most earnestly ask your Lordship's attention to the statement of this most extraordinary fact, which is contained in my letter to Sir James Melvill of the 27th March 1855. That statement has been submitted to the Bombay Government. It has been commented on by Mr. Frere, and those who now constitute the Government of Bombay; but no denial has been given to my statement.

Your Lordship will see presently how this examination was afterwards used against me when my case did come to be considered by the Government Council of Bombay.

In 1846, however, the Government of Bombay refused to institute the inquiry, and stated that the matter must be determined by the Government of Scinde; accordingly, on my return to Scinde, Sir Charles Napier called on me for a written explanation. I gave it in writing on the 6th of September 1847, and I formally Blue Book, 1853, p. 386.

formally handed in depositions to sustain it, some of which I had previously obtained.

Blue Book, 1853, p. 385. On the 10th of September 1847, Sir Charles Napier transmitted my explanation, with these documents, to the Governor General. That he deemed them perfectly satisfactory your Lordship cannot doubt when you read his letter of the 21st of the same month, which I have already taken the liberty of quoting.

It must be assumed that they were thought so by the Governor General, because no instructions in reply to this ever came from the Governor General; whatever occurred afterwards emanated from the spontaneous movement of the Bombay Government, without any opinion being expressed from Calcutta.

In 1847 the province of Scinde became a part of the Presidency of Bombay. I was now subject to a new control. Your Lordship will see how those who had already suceeeded in prejudicing that Government against me used the new power which they acquired over me.

I learn, my Lord, from a minute of Lord Falkland, dated the 24th April 1849, that the first step taken afterwards was a verbal request from the Governor of Bombay, during a visit to Scinde, to Mr. Pringle, to investigate the matter.

On the 24th of March 1848, Mr. Pringle submitted a report to the Bombay Government.

Blue Book, 1853, p. 385. He transmitted the documents which had been already sent by Charles Napier to the Governor General, and called the attention of the Bombay Government to the fact that no instructions from the Governor General had since been received.

He further stated, that his interview with Sir Charles Napier, on the occasion of Sir Charles Napier introducing me to him, showed that Sir Charles Napier considered the explanations satisfactory.

Blue Book, 1853, p. 389. On the 2d of June, Mr. Pringle received a Government letter, dated the preceding 24th of April, in which he was informed that my explanation of the 6th of September 1847, was unsatisfactory, and further commanding him to suspend me from my office, and desiring Mr. Pringle to hold an inquiry into the facts, and to investigate any other circumstances which might lead to a suspicion of my dishonesty or improper conduct.

The effect of this letter, my Lord, which is on record in the Blue Book of 1853, page 390, cannot be fully understood without reference to the report of Mr. Pringle, to which it is a reply. Perhaps, my Lord, under all the circumstances, you will consider this Despatch was not unlike a direction to condemn. Mr. Pringle held the investigation as desired; he omitted no inquiry that could have elicited facts unfavourable to me. But to his honour be it said, he did not condemn me; on the contrary, he reported in my favour; he stated that I was entitled to have my explanation believed, that there was no proof against me; he bore testimony to the high opinion which Sir Charles Napier had entertained of me, and to the satisfaction which he himself had found in my official conduct. He further stated, that any charges made against me to him had proceeded from persons of notoriously bad character and common informers, who had never preferred a specific charge; and he unequivocally stated his opinion to be, that nothing should be done derogatory to my position or injurious to my fortune. If I had acquired an influence in Scinde, which might make it desirable to remove me, he recommended that I should either be removed to another post, or permitted to retire on a pension; while he expressed the regret which he would feel if either step deprived him of my services.

Blue Book, 1853, p. 390.

This report was made on the 2d of November 1848. It is scarely credible, but it is true, that in the face of this report, without further inquiry, without calling on me for any explanation, the Government of Bombay, by a letter of the 21st of May, ignominiously dismissed me, and desired my pay to be stopped from the date of my suspension.

Blue Book, 1853, p. 463.

I asked, my Lord, for the reasons of dismissal; after the delay of a year, I received in reply the following letter:—

Parliamentary Paper, 1858, p. 5. "With reference to your letter, dated the 14th of May, and 10th July 1849, I am directed to inform you that the circumstance which excited suspicion against you, was the fact (brought to the notice of Government by Aga Mahomed Rahim Shiragee) that you had remitted to him during the years 1842 and 1844, sums of money, amounting to nearly a lac of rupees; having moreover made the remittances partly in the names of other parties.

"Having

"Having been called on by Mr. Pringle for an explanation, you declared that 35,170 rupees of the amount had been inherited by you from your father; that about an equal amount was the profits acquired by the employment of the above as trading capital, and that 30,000 rupees was the property of one Hajee Mahomed; which assertions, however, are at variance with your own statements on oath, in a trial in the Supreme Court, in which you gave a totally different account of the mode of acquisition of these sums, and are equally contradicted by the evidence of Aga Mahomed Rahim, who, on your own showing, was your father's executor, and, who declared on oath, that when you went to Scinde you had little or no property.

"3. The circumstances, together with the denial of the merchants in whose names the bills were remitted to Bombay, of all knowledge of their existence, fully prove that you have not given a true history of the transaction.

"4. Under these circumstances, the Honourable the Court of Directors have approved the decision of this Government directing your dismissal from office, and have also intimated that the memorial which you addressed to the Government of India, has made no alteration in their opinion.

"I have, &c.

(signed) "*C. J. Erskine*,

"Deputy Secretary to Government."

"Bombay Castle, 11 May 1850."

I have now, my Lord, only to state the efforts which I have made to obtain redress. On the 1st July 1849, I addressed a memorial to the Governor General, but without effect. Blue Book, 1853, p. 477.

On the 27th of October 1853, I addressed a memorial to the Court of Directors. In June 1855, I sent a further one. To both these memorials, after the usual delays of reference backwards and forwards between England and India, I received at the end of two years a letter from Mr. Anderson, Secretary to the Bombay Government, dated 13th of May 1857, informing me that there was no change in the views of the Government on my case. Parliamentary Paper, 1858.

I could do nothing more: I was the victim of injustice, to which I was compelled to submit, and here probably the matter would have ended but for the circumstances which I am about to state.

I was surprised in the month of April last to find a number of documents relating to my case printed among the Papers of the House of Commons. By this publication, I for the first time became informed that my memorial of 1855 had been referred to Mr. Frere, the present Commissioner of Scinde; that this gentleman had made upon them a long, and what appeared an elaborate report, and that this report had mainly influenced the Bombay Government in the decision at which they had arrived. Your Lordship will observe that this report of Mr. Frere was not the result of any new inquiry or fresh investigation; it is a mere comment upon the results of the former inquiries, and the facts of the case; a report such as any man in London, having the facts and documents before him, might have made with the same advantage as Mr. Frere in Scinde.

Mr. Frere thought proper to state his inferences from the evidence, in language the most violent and insulting to me; not content with this, he indulged in comments and remarks utterly irrelevant to the evidence on which he professed to comment, and of a character the most slanderous to me.

When I read that report I found it full of mistakes as to the facts and the evidence. Even under the provocation I received, I should be sorry to impute to Mr. Frere any wilful misrepresentations, but I can only say that he has entirely misunderstood the facts upon which he comments; and that it is easy to destroy all the credit of his report by demonstrating what I must call the gross and palpable mistakes into which its writer has been led.

Apart from any possibility of obtaining redress for my dismissal, it was impossible for me not to notice this report. For two years this slanderous comment had been among the records of the India House; while I, the man whose means of livelihood were assailed, was left in entire ignorance of its existence.

At the end of two years, without notice to me, without the opportunity of one word of reply, it is included in a return to the House of Commons, and published to the world, with at least the apparent sanction both of the India House and the House of Commons.

To this, my Lord, it was and is impossible for me in silence to submit. I presented to the House of Commons the petition which I have the honour to enclose, and on the 7th of May I addressed to the Court of Directors a letter in which I trust I showed no unnecessary warmth. Having detected the gross mistakes into which Mr. Frere had fallen, it was due alike to the Court of Directors, to the Indian Government, and to myself, that I should point them out. I accompanied this by those observations in which I have ventured to say I demonstrated conclusively, that Mr. Frere's inferences to my disadvantage were unwarranted and unjust.

In reply to my letter, as I have already stated, I was informed on the 26th of May that my letter, with its enclosures, would be forwarded to the Government of Bombay for any observations they might suggest.

Unwilling as I am to trespass on your Lordship's time, I venture to ask from your Lordship a perusal of my letter of the 7th of May, and the observations accompanying it; when you have done so, I will leave it to your Lordship to do justice between me and Mr. Frere.

The matter is not altogether a personal one; no Government can retain the confidence of a people that permits its faithful servants to be treated as I have been; and in the conduct pursued towards me, your Lordship will see the working of a system of partisanship and intrigue, by which honourable and independent men are too often crushed.

But, my Lord, the matter does not end with the exposure of the injustice of Mr. Frere's report. That report has only taken up and repeated the gross misrepresentations upon which I was originally condemned. When Mr. Pringle's report of the 2d November 1848 was brought before the Government Council of Bombay, some one suggested that information should be sought from the evidence taken in the suit between me and Mahomed Rahim; your Lordship will remember that a member of the Bombay Government had requested that in the course of that trial certain questions should be put; it was, my Lord, on inferences drawn from that evidence that I was condemned, in opposition to the report of Mr. Pringle; and when the documents of the court are examined, it is as plain as the light, that the inferences which they were assumed to establish are not only unsupported by the facts, but are directly contradicted by them.

I have quoted the letter of Mr. Erskine, in which, in reply to my request, the reasons for my dismissal were assigned. Upon carefully analysing every document to which I have access, down to the report of Mr. Frere, I found these same reasons are those upon which the justice of my dismissal is rested; they are:—

1st. That my statements to Sir Charles Napier and Mr. Pringle were inconsistent with my own evidence in the suit between me and Mahomed Rahim.

2d. That they were contradicted by the evidence of Mahomed Rahim.

3d. That the merchants in whose names bills were remitted by me, denied any knowledge of them.

These conclusions were formed in a council before which no explanations of mine were asked. They were formed in a council where a person who distinguished himself as my enemy was present. My Lord, in point of fact, not one of these reasons existed; had I been heard in my own defence, five words would have shown that they were founded on the most entire misapprehension of the facts.

I pray earnestly your Lordship's attention to this statement I am prepared to prove. I have proved, that each and every one of these three supposed reasons has no foundation in fact. I can go further; with the light supplied to me by the Parliamentary Returns, I can not only show that those who acted on these reasons misapprehended the facts, but I can show the precise mistake or misrepresentation of the evidence by which they were misled.

These may seem to be bold words; your Lordship will not think them so when you examine the proofs by which I sustain them.

I have shown this conclusively in the observations on Mr. Frere's report, which accompanied my letter to the Directors of the 7th May; I can now do little more than repeat those proofs, but it may be desirable that I should place them before your Lordship in a more connected and distinct form, and I have therefore ventured

ventured to annex to this letter, a memorandum, or memoir, in which I show that the supposed impeachments of my statement have no foundation whatever in fact.

The reply of the Court of Directors of the 26th of May, plainly implies that the matter is open to a new investigation; but, totally independent of this, I am sure that your Lordship will be of opinion that the matter has now assumed such a position that it is impossible to refuse to examine into the grounds of my dismissal, and to reverse that dismissal if it was unjust. Your Lordship will perceive that it is now ascertained from Parliamentary documents, that statements seriously affecting me have been made without any opportunity whatever being given me of contradiction or explanation. Investigations have been made without any power on my part to watch them; evidence has been called for of which I never have been apprised; the result has been as might be expected, that inferences have been drawn to my prejudice which a very few words of explanation would have shown to be unjust.

Your Lordship will also see that the report of Mr. Frere, containing observations the most disparaging to me, and going far beyond the occasion that called for them, has been published to the world.

I rest my right to the reparation which I ask upon the facts of the case.

I was in the employment of the British Government. I have never been convicted of an offence; nay, I have not even been subject to any specific charge.

Even if the suspicions created by the letter of a cheat were sufficient to call upon me for explanation, two successive chiefs of administration of Scinde have vindicated me. The result of the inquiries of Sir Charles Napier ought to be conclusive in my favour, especially when followed by the report of Mr. Pringle.

But if after all this your Lordship thinks that I ought to be called on to satisfy the Government as to the mode in which I became possessed of the money I deposited with Mahomed Rahim, then, my Lord, I say confidently that I have done so, and that every attempt to impugn the accuracy of my account has completely failed.

It is in this latter view that I trouble your Lordship with the memoir which accompanies this letter.

All the documents which I know of as bearing on my case will be found in the House of Commons' Papers, 1853, No. 615, from page 383 to the end; in the further correspondence printed by the House of Commons on the 25th of March last, and in the correspondence which ensued between me and the Court of Directors. Of my letter of the 7th of May, and the enclosed observations, I had the honour at the time of forwarding copies to the Board of Control.

For every statement I have made I refer to the document which establishes it. Your Lordship can easily satisfy yourself of their truth; but if your Lordship pleases to adopt such a course, I am willing to be judged by a reference to any impartial person whom your Lordship may appoint. Let any such person examine the whole case, and say, after calling for my replies to any charge that is made against me, whether there be anything in the whole transaction which justifies the act of my dismissal.

Your Lordship will see that while I was suspended from my office in June 1848, my dismissal did not take place until June 1849. It is not a matter of any great moment, but I apprehend I am entitled to my full pay during that year at any moment of which my suspension might have been removed, and I might have been called on to act.

From the time of my dismissal I claim the pension for which Sir Charles Napier recommended me, and which but for these unjust accusations I certainly would have obtained.

I need not tell your Lordship that this tardy justice will make me but poor compensation for all I have lost. When I was the honoured friend of one of the greatest of your generals; when Sir Charles Napier declared himself indebted to my services more than to any thousand of his soldiers for the settlement of Scinde; when General Outram declared that I had shared all the exposure and arduous services which he himself had to undergo; when I received from one of the greatest of the rulers you have sent to India the honorary rank of which I may justly feel proud; when it was conferred by Lord Ellenborough, and with the approbation of Sir Charles Napier, I might perhaps have thought that to me, though a native of the East, a brilliant, or at least a useful career might have been open;

that "an Arab gentleman" might have done some more service both to England and to India.

These things perhaps, my Lord, are past; my enemies have done me mischief that can never be repaired; but there is reparation which I may have; and after 10 years, during which I have suffered an unjust wrong, I have hopes that from your Lordship's hands I may at least receive the redress which it is in your power to give, and to which in justice I am entitled.

I have, &c.
(signed) *Mirza Ali Ackbar.*

P. S.—Mr. Frere, in one part of his report, appears to imply that Sir Charles Napier may not have been satisfied with my explanation. I have, therefore, ventured to forward with this an extract from a book written by Sir Charles Napier long after his arrival in this country, in which he expresses his opinion of the manner in which I was treated.

The extract is taken from his book published after his death, entitled "Misgovernment of India." In his journals, published by his brother, Sir William Napier, his opinions upon the subject are, if possible, more strongly expressed.

MEMOIR on the Reasons assigned for his Dismissal from the Service of the Indian Government, by *Mirza Ali Ackbar*, Khan Bahadoor, respectfully submitted to Her Majesty's Secretary of State for Indian Affairs.

THE object of this memoir is to show, in a brief and connected form, the entire groundlessness of the allegations upon which my dismissal has been rested. The facts connected with that dismissal are fully stated in the letter to which this is an accompaniment. In this memoir, I confine myself to showing, by reference to documents that cannot err, that the reasons put forward for my dismissal originated in a palpable mistake or perversion of the facts upon which they were said to rest.

I was dismissed on the 2d of June 1849 from my office of moonshee to the British Government in Scinde, which I had held with credit and honour for a period of nine years.

The grounds of this dismissal rest entirely on the fact of my having deposited with Aga Mahomed Rahim, a merchant banker at Bombay, a sum of 10,000*l.* It is said that the possession of so large a sum of money by a person in my situation was sufficient to raise the suspicion that I had acquired it by improper practices in my office; that I therefore ought to have been called on to account for its possession; and that this having been done, the mode in which I accounted for it was so unsatisfactory, as to justify my dismissal.

I might, perhaps, very fairly urge, that the possession of a sum of money was in itself no crime; that to trace it as proof of guilt in the absence of any one charge of misconduct to which it could be applied, involves a prying into men's private affairs utterly unworthy of a Government which expects to be served by honourable and independent gentlemen.

I might say that until some accusation of misconduct was brought against me, the Government I served had nothing to do with the amount of my balance at my bankers. That if its amount excited suspicion, the very utmost to which this ought to have been carried, was to create vigilance in watching me, and a strict scrutiny; but that if these failed in detecting me the semblance of misconduct, that I should not have been condemned merely because I was the owner of more money than my enemies thought I ought to have possessed.

I might, perhaps, with justice and reason, ask if the same rule has been applied to others. Indian officials sent from Europe have been known to leave it, not with the paltry savings which have been imputed as a crime to me, but with fortunes of immense amount. The facts have been published in the public journals in India, upon authority more credible that the letters of a knavish debtor. I have never heard that these officials have been called on to account for the money they had acquired, under pain of dismissal and degradation if they could not show how it had been made.

This is not, however, my defence. I did submit to the inquiry into my private affairs. I did give an account of the means by which I had acquired the money which was charged upon me as a crime. I gave it to Sir Charles Napier in 1845, and again in 1847. I gave it to Mr. Pringle in 1848. Both these personages regarded my account as satisfactory. I now allege that it was so, and I prove that the attempts that have been made to impeach it are founded on the grossest and most palpable mistakes as to facts.

I had in the year 1845 a sum of about 10,000 *l.* in the hands of Aga Mahomed Rahim, a merchant banker of Bombay; he had been my father's banker, and had been entrusted with the money which, on my father's death, formed my patrimony. In 1845 I called on him to pay me the sum of 10,000*l.* Up to this time he had the highest character of solvency and integrity; he met my demand by writing to Sir Charles Napier, that he was afraid to pay me over this money, because he suspected it was Government money, and he might be made to pay it over again.

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To sustain this monstrous pretence, he stated that the money was remitted in bills, drawn, not in my own name, but in the names of other persons, of whose demands he also professed to be afraid.

There is no doubt that this unfortunate man almost immediately afterwards became bankrupt. He had held almost the highest position among the merchants of Bombay, but his history represents one of those melancholy instances of frauds committed by such persons, which are not confined to any one country.

In the course of the litigation arising out of his affairs, I was once compelled to answer written interrogatories put to me by persons who opposed my claim. This was on the 18th June 1847. On the 26th of July 1848, Aga Mahomed Rahim was verbally examined on the same subject.

In the manner to which I have adverted in my letter, the Government of India were induced to regard this fraudulent letter as sufficient to call on me for an explanation of the manner in which I had acquired the 10,000*l.*

I gave that explanation, and it was this:

That of the 10,000*l.*, about 6,000*l.* was my own, the residue was the money of a friend; that of my own 6,000*l.*, I had been left 3,000*l.* by my father; that I had increased my fortune by savings of money I made from presents received while on the staff of Lord Keane, and by the profits of trade in which I had embarked all my capital in a sleeping partnership.

I may say with confidence that these statements are not only unimpeached, but are entirely borne out by all the facts and documents relating to the case.

The impeachments of my statement, those upon which my dismissal has been rested, are:

1. A supposed contradiction between those statements and my own evidence in my suit relating to the property of Aga Mahomed Rahim.

2. A supposed contradiction of that statement by the evidence in the same suit of Aga Mahomed Rahim himself.

3. The supposed denial of all knowledge of the bills by merchants at Hyderabad, in whose name I was said to have remitted bills to Aga Mahomed Rahim.

I undertake in the following observations to demonstrate that every one of these supposed impeachments is unfounded.

First. As to my own evidence in the Supreme Court.

When I put in a claim on foot of the security which Mahomed Rahim had given me, those interested in disputing my right adopted the course of putting personal interrogatories to me; these were written questions on paper, and I put in written answers. I had no interest or object whatever in telling what money was left me by my father, or what money I had made in trade; I was not asked any questions as to either. The written questions put to me, and my written answers, are printed in the Parliamentary Papers (No. 615), 15th June 1853; the questions at page 440, the answers at page 414.

Question, page 440.	Answer, page 414.
What is your office or employment, and what salary did you receive, and how long did you receive such salary? When was it raised to the present amount, and what was it previously to such increase? Have you received any perquisites of office, or other income, independently of your salary, and from what source? Where did you obtain the large sums of money mentioned in the several conveyances set up by you?	And this examinant saith that his office and employment is principal moonshee to Sir Charles Napier, Governor of Scinde; and this examinant at first, and until the year 1844, received a salary of 260 rupees per mensem, under the said Sir Charles Napier; and this examinant's salary was raised to the present amount of 520 rupees per mensem in the year 1844; and this examinant saith, that during the campaign in Affghanistan, in the years 1839 and 1840, this examinant was the moonshee employed by the late Lord Keane; and whilst at Lahore, this examinant received several valuable presents from divers persons, but not of office, and he obtained, as deposit, a portion of the several sums of money mentioned in the said conveyance from a friend of this examinant in Scinde, whose name this examinant is precluded from disclosing; and this examinant lastly saith, that he is ready to produce before the examiner of this honourable court, vouchers and papers, proving and showing the several sums of money from time to time remitted and paid by this examinant to the said Aga Mahomed Sheerazee, principally by means of Government bills on the Treasury, &c. &c.

Any one reading this can at once refer each answer to the question to which it is a reply. I was asked as to my office and my salary, and I answered it. I was asked if I ever received any perquisites of office, or income independent of my salary? I stated, as I was bound to do, that while on Lord Keane's staff, I had received several valuable presents from divers persons, but not of office. I was asked where I had obtained the large sums of money mentioned in the conveyances? I answered that I had obtained as a deposit a portion of these sums from a friend in Scinde.

The questions and answers run thus:—

Q. "What is your office or employment, and what salary did you receive, and how long did you receive such salary; when was it raised to the present amount, and what was it previously to such increase?"

A. "His office and employment is principal moonshee to Sir Charles James Napier, Governor of Scinde, at first and until the year 1844. He received a salary of 260 rupees a month; his salary was increased to its present amount of 250 rupees per month in the year 1844."

Q. "Have you received any perquisites of office, or other income, independently of your salary, and from what source?"

A. "During the campaign in Affghanistan, he was the moonshee employed by the late Lord Keane, and whilst at Lahore he received several valuable presents from divers persons, but not of office."

Q. "Where did you obtain the large sums of money in the several conveyances set up by you?"

A. "He obtained as deposit a portion of the several sums of money mentioned in the said conveyances from a friend in Scinde, whose name he is prevented from disclosing, and he is ready to produce vouchers and papers showing the remittances he made to Aga Mahomed Rahim, principally by means of Government bills."

If my opponents thought I had not fully answered their questions, they had the power of appealing to the Court to compel me to answer further. I answered the questions I was asked; but no person reading over these questions and the answers can say that I gave one single answer inconsistent with my statement to Sir Charles Napier.

I can very easily understand that my answer was placed before the Council of Bombay without the questions; that it was represented to them, not as a series of distinct and specific answers to distinct and specific questions, but as an account I was called on to give of all the earnings of my life. And then it might be said that I had omitted to make any mention of my inheritance from my father, or my gains from trade; but when the questions are read, the whole matter is plain. I mentioned my office and my salary, because minute inquiries were made. I mentioned the presents I received, because I was asked to tell of any increase beyond my salary I had received. I said nothing about my inheritance, or my trading, because I was not asked. I did not volunteer any information as to my private affairs; my business, indeed, and my duty, was only to answer the questions.

Thus conclusively, and beyond the possibility of doubt, is the allegation refuted, that my statements and answers were in the least inconsistent.

But it is said that my statements of the inheritance I derived from my father is contradicted by evidence given by Aga Mahomed Rahim on a trial in the Supreme Court of Bombay.

If it were so, perhaps, under the circumstances, no great weight should be attached to the evidence of that man. But the fact is, that no such evidence was given; on the contrary, the evidence of Aga Mahomed Rahim exactly, and most strikingly, corroborated the statement I had made.

On the 26th July 1848, Aga Mahomed Rahim was examined on a trial relative to my mortgage. On cross-examination, he was asked as to my property. The Chief Justice, Sir Erskine Perry, said these questions were irrelevant, as no matter how I acquired the money, I had lent it to Mahomed Rahim. The Chief Justice and Sir William Yardley both presided at the time. Both took notes of the evidence, and the notes of both were on record. The note of the Chief Justice was not so full of this answer as that of Sir William Yardley. It was this:—

"When he went to Scinde he had no property of any amount."

Sir William Yardley's note was:—

"Ali Ackbar had some money of his own, not so much as a lac of rupees."

There is no substantial difference; but there can be no doubt that the fuller note is the more accurate.

The evidence as taken down by counsel in the case was:—

"Ali Ackbar had some money of his father's; he had not a lac of rupees when he went to Cabool."

There can be no doubt of what the man did really say; he said exactly as I had represented, that I had a small patrimony left me by my father, but that it did not amount to anything like a lac of rupees.

Yet every one who condemned me laid the greatest stress upon the fact, that Mahomed Rahim had contradicted my statement. A word of explanation would have made it as clear as the sun at noon day that he had corroborated it to the letter.

These documents from the Supreme Court were obtained without any notice to me, and were acted on without asking for the explanation which would have wholly altered the effect attached to them.

It is right that I should distinctly repeat my statement, that a member of the Government of Bombay interfered in this private suit by requesting the counsel who appeared to shape his examination so as to elicit evidence that might be used to obtain my dismissal.

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When the Government Council of Bombay came to consider on my case, the documents on the records of the Court were sent for to be used against me. It is plain to demonstration that they were wholly misunderstood. The nature and character of my answer was altogether mistaken, and the mistake perverted its meaning.

As to the evidence of Mahomed Rahim, it so happened that the notes of both judges of the trial were on record, but the note of only one was obtained. It happened that it was the note, the shortness of which left room for misrepresentations; the fuller note of Sir William Yardley was not produced.

Even the effect of the evidence as recorded by Sir Erskine Perry was wholly mistaken, and by a combination of these singular accidents it happened that things have been taken for granted as unquestioned truths, which so far from being true are diametrically opposed to the fact.

It is not for me to say how all this occurred or was continued. It is enough for me to point out that the members of the Government of Bombay were entirely misled in their impressions of the evidence given on these trials in the Supreme Court.

It resulted as a natural, if not a necessary consequence, of the system under which evidence is thus privately obtained against an individual, without giving him an opportunity of reply or explaining it. When once such a system is resorted to, there is no security against injustice; any garbling is possible, any misrepresentations easy, and mistake is almost as matter of course. Had I been brought before the Council of Bombay, and asked to explain the documents from the Supreme Court, my explanation would have been as easy and as triumphant as it is now.

That 3,000 *l.* of the sum in Mahomed Rahim's hands belonged not to me, but another person, I proved by the deposition of that person himself.

That I had embarked my money in trade with a person of the name of Hajee Ally, I proved by two distinct depositions before Sir Charles Napier in 1847. But, in fact, when I established that I inherited 35,000 rupees from my father, the whole point of the charge against me was gone.

That I was left a sum of 35,000 rupees by my father, I proved by the production of the account taken from the books of Aga Mahomed Rahim, in which I was credited with that sum as belonging to my father at his death. In this same account I was charged with drafts exactly in accordance with my statements of my investments in trade.

But the most striking corroboration of this statement was obtained by evidence not within my power; but obtained at the instance of one of the Council of the Bombay Government. I had stated that the fact of my inheriting a patrimony was known to the British officers with whom I had served. Dr. Winchester was called on to testify as to this fact. The following is his letter in reply:—

"Sir,

"I have the honour to acknowledge your letter, No. 131, under date the 18th of March 1856, Secret Department, with accompanying extract from the memorial of Mirza Ali Ackbar Khan Bahadoor, addressed to the Honourable Court of Directors, desiring me to report whether I have any recollection that Mirza Ali Ackbar Khan communicated to me, for Colonel Outram's information, that he was possessed of considerable property, which he was ready to show, if desired. In reply I beg to state that I have a distinct recollection of the moonshee's having detailed to me the history of his life; in particular that Mrs. Jervis took the greatest interest in his youthful career, and that he had been left possessed of considerable wealth, Aga Mahomed Rahim being his guardian."

After this letter no human being can pretend to doubt that I really inherited the patrimony which I stated. Ridicule at the very notion, and unscrupulous statements that it was an afterthought put forward by me at the last moment, form the staple of the "able and conclusive reports," upon the authority of which I have been deprived of the just and honourably earned reward of my services.

It remains that I should notice the third point, the only one which, I regret to see, appeared to Mr. Pringle to be unsatisfactory, and that is the supposed denial of knowledge of the bills remitted by me to the "Hyderabad merchants" in whose names they were drawn. It is one, perhaps, of little value when the two first are removed; it is, however, capable of disproof.

The documents published in the Parliamentary Papers of 1853 supply my complete defence.

In these papers is published a list of all the bills remitted by me, with the names of the parties in whose favour they were drawn, and those of the parties to whom they were paid.

These bills were like bank post bills in this country. It mattered not in the least in whose favour they were drawn, provided they were regularly endorsed by the payee.

Those I remitted were generally obtained through the agency of Hajee Mahomed Hussin, and were drawn in favour either of himself or the agents he employed.

It is, however, stated that the Hyderabad merchants, whose names had been used, when applied to denied all knowledge of the bills.

Every document to which I refer is printed in the Blue Book of 1853, and it is impossible there can be any mistake.

When Mr. Pringle obtained a list of the bills drawn, and the names of the parties in whose

favour they were drawn, on the 11th of July 1848, he forwarded the names to the Commissioners, with a direction that they should ascertain the residences of the parties.

On the 26th of July the police made their report; according to this report forwarded four only resided at Hyderabad.

These were,

1st. Hajee Mahomed Hussein.
2d. Aga Mahomed.
3d. Syed Hussein.
4th. Mirza Hussein.

To these four only can the statement apply that "the parties at Hyderabad denied all knowledge of any bills having been drawn in their names."

This statement is contained in a letter from Captain William Brown, superintendent of police; he does not state it of his own knowledge; he refers to it as a difficulty experienced by the lieutenant of police at Hyderabad. There is no report from the lieutenant, and no further information than this meagre statement either as to the mode of application or the nature of the denial.

I was in no way privy to these inquiries. Had I been so, I could easily have shown that the police had fallen into a mistake. Mr. Pringle assumed that the parties drawing the bills at Hyderabad were merchants; they were in fact clerks or persons in the employment of Hajee Mahomed Hussein, the first-named of the four.

In his name a considerable number of bills were drawn, but he certainly did not deny knowledge of the transactions; upon this point there can be no doubt. On the 22d of November 1846, he made at my instance a deposition, in which he fully stated all the circumstances connected with his obtaining these bills for me for the purpose of remittance to Bombay. This deposition was made before Captain Marston, the police magistrate in Scinde, and is recorded in the Blue Book of 1843, page 388. So far as he is concerned, therefore, there is not the slightest ground for supposing that he did not fully acknowledge his share in the matter.

He was the principal person acting as my agent in obtaining the bills; but as to the other three persons, I have stated my belief that they were clerks, or persons in the employment of Hajee Mahomed Hussein; but, turning to the list of bills supplied by the Accountant General, their names appear in following only:

See orig.

	Rs.
Murza Hussein, 25 May 1843 - - - - -	1,000
Syed Mahomed, 17 July 1843 - - - - -	350
Aga Mahomed, 18 July 1843 - - - - -	3,200
Making in all - - -	*Rs.* 4,550

So that it is perfectly plain, upon incontrovertible documents, that, taking the police report as it is, unexplained, with all its looseness of statement, and giving it the most adverse interpretation to me, the statements can only apply to these three individuals and to these three bills, amounting in all to little more than 400 *l.*, each individual having just been a party to one bill.

Whatever weight might belong to the fact of such a denial of it being given by parties engaged to any great extent in remitting the bills, when reduced to what it really is, amounts to nothing. It will perhaps be thought, that even as to these three individuals, the alleged denial rests upon no satisfactory evidence, so as really to make it worth a thought. Even were it assumed that each of these three persons had been questioned by the police, and that each of them had denied all knowledge of the bill, to what does it amount? They were asked in 1848 as to a transaction of 1843; they did not choose to give information, no uncommon thing in the East; they may have forgotten, or they may not have chosen to involve themselves in a Government inquiry. It is impossible to raise any inference against me because three persons, each drawing one bill, amounting altogether to the sum I named, refused five years afterwards to respond to the questions of the police.

Upon this miserable foundation rests the statement which is reiterated against me in every form of condemnation, that the parties in whose names the bills were drawn denied all knowledge of them. Nay, so far has misrepresentation imposed upon an honourable man, that Lord Falkland signed a minute, recorded at page 400 of the Blue Book of 1853, in which he states that "the parties named as the payees of a large portion of the sums into the treasuries from which the bills were granted, deny all knowledge of any bills having been drawn in their names."

"This fact," his Lordship goes on to observe, "places the whole transaction in a most suspicious light."

It is matter of demonstration that "the large portions of the sums," in reality and truth could not have been more than 450 *l.*, when the circumstances are considered.

But, be this as it may, the statement applies to three individuals, and to bills to the amount of a little more than 400 *l.*

I am bold to say that I have thus conclusively and irrefragably refuted the three allegations upon which I have been condemned. They are the staple of every paper that censures me, from the letter of Mr. Erskine to the report of Mr. Frere and the minute of the Bombay Government, professedly based upon that most mistaken and incorrect report.

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With the complete demolition of these baseless fabrics, the superstructure that is erected on them must fall. If I have, as most assuredly I have, succeeded in showing these allegations to be utterly unfounded, then it only remains for Her Majesty's Government to do, even late, and it must be incomplete justice, to a faithful servant who has been the victim of misrepresentation and mistake.

EXTRACT from the Posthumous Work written by Lieutenant General Sir *Charles James Napier*, G.C.B. Published by Lieutenant General *W. F. P. Napier*, 1853.

WHILE awaiting an answer to the last question, it will not be impertinent to show how Willoughby and Reid have dealt with my moonshee, Ali Ackbar, whose treatment has been before alluded to in the comparison between Lord Dalhousie's Government of the Punjaub and my Government of Scinde.

Ali Ackbar was attached as moonshee, or native writer and interpreter to the political establishment of Scinde, when in 1842, it was made over to me by Lord Ellenborough, and he was strongly recommended by my predecessor in the political agency. At my side during all the subsequent war, his character developed itself very favourably. To a powerful frame and the staunchest courage he joined a frank and loyal disposition; was patient in difficulties, physically and mentally, very enduring, and zealous in the discharge of his duties. He won my regard in the field, and retained it in after years during the civil administration of the country. The Supreme Government rewarded his services with the order of merit. This was his ruin. The Bombay Council marked him for a victim through whom to strike at me; there is no other way of accounting for the remarkable character of the proceeding instituted against him by Messrs. Willoughby and Reid, of the Bombay Council; they hoped to find means of concocting evidence against me by persecuting him, and at all events pain me by his ruin. Thus they proceeded:—

Mr. Pringle, my successor in the Government of Scinde, was ordered to make an inquiry into the alleged fact, that Ali Ackbar had, in the years 1842-43, remitted large sums of money to his banker and agent at Bombay, Aga Mahomed Rahim. Extraordinary exertions were then made to obtain accusations; the country was scoured for evidence, and the lieutenants of police at the principal towns in Scinde were required to post public notices inviting accusers to appear against the moonshee. The result of all this was embodied in a report from Mr. Pringle, which, for the sake of brevity, has been condensed as follows:

"Ali Ackbar, accounting for his property, states that 35,170 rupees was derived from inheritance; 30,000 was the property of Mahomed Hoossein, with whom he had agreed in 1843 to proceed to Arabia. The remainder consisted of earnings in the Affghan campaign, and two-thirds of the profits of a joint trade carried on for five years and a half with one Hajee Allee, from funds derived from inheritance, 29,000 rupees; but Ali Ackbar had no active part in the concern.

"The evidence procurable is consistent with Ali Ackbar's statement, The parties to some of the bills decline giving evidence, indeed, which may, however, be attributed to fear of a breach of mercantile confidence; though the conduct of the parties at Hyderabad in thus declining is unsatisfactory."

Here I must remark that nothing will induce a native merchant in Scinde to show his books. On two occasions Captain Rathborne, my collector at Hyderabad, wanted to see the books of some merchants, but they positively refused. Bred up under the Ameers' rule, they are accustomed to think, when Government becomes acquainted with their accounts, spoliation must follow. When the Ameers got hold of a banker's book, the next day brought a demand of "the loan of the balance credit!" Certainly they would not show their books; the mere fact of their doing so would have injured their credit all over Asia.

"Mr. Pringle is of opinion that Ali Ackbar is entitled to credit in the absence of proof to the contrary, beyond the suspicion arising from the magnitude of the sum. The only accusers against Ali Ackbar have been common defamers, who were never able to make their charges in a specific form."

"Mr. Pringle is of opinion that nothing should be done to Ali Ackbar derogatory to his respectability or injurious to his fortune. His position in Scinde has invested him with a certain influence, and he recommends that his services be transferred, or that he be pensioned."

What was the conduct of the Bombay Government on receipt of this honest report? Was Ali Ackbar honourably restored, or was he pensioned? Neither. Baffled by the scrupulous integrity of British inquiring officers, and enraged at the simple candour with which Mr. Pringle expressed his opinion, Mr. Willoughby cast the report aside, and adopted a course best described in an extract from Lord Falkland's Minute.

"For some time prior to the above (Mr. Pringle's report) reaching Government, several law suits against Aga Mahomed (the man to whom Ali Ackbar remitted the money), had been pending in Her Majesty's Supreme Court, and amongst them, one to which the moonshee, Ali Ackbar, was a party, as a claimant on Aga Mahomed's estate. It therefore occurred to Government, that in the course of the proceedings the moonshee must have been examined upon oath with regard to his transactions with Aga Mahomed, and also have put in an account current of those transactions, and have proved in what mode his remittances from Scinde had been effected."

I will presently show that it was not for any statements of Ali Ackbar on this trial, that the Government sought for copies of the proceedings, but for the perjured evidence of the bankrupt swindler, on whose estate Ali Ackbar had a claim.

The papers alluded to were delivered up to the Government by the Chief Justice, not however without a remonstrance against so "novel a course," and the declaration that "it must be presumed the documents asked for would be used for only proper purposes." Of that the public shall now judge.

The evidence of the documents thus obtained, goes to prove that Aga Mahomed had been the moonshee's guardian and trustee when a boy, and his banker in later years, but that he was become bankrupt; that in September 1845, Ali Ackbar having heard damaging accounts of his banker's circumstances, wrote to demand his money of him; and Aga Mahomed, unable to meet the call, resorted to the usual Eastern practices of evasion and treachery, with a view to get rid of his principal creditor. While pretending to make over certain houses and lands in satisfaction of the debt, he secretly told the Government that Ali Ackbar had remitted suspiciously large sums to him about the time that "Scinde was plundered." His object was to ruin the poor moonshee, and how he succeeded shall shortly be shown.

Subsequently, Aga Mahomed was declared a bankrupt, and his estates were sequestered by the sheriff of Bombay, including the property that had been previously made over to Ali Ackbar, in the manner before described; and it was for the recovery of this property from the sheriff that Ali Ackbar became involved in the lawsuit.

It would have been fruitless to have searched through such an inextricable mass of perjury as an Indian money law suit presents for any real solution of the question of Ali Ackbar's integrity in Scinde; and that was not Mr. Willoughby's object. He only longed for Aga Mahomed's evidence, no matter how palpable the perjury, for he knew it would be in opposition to Ali Ackbar's statement, and the ruin of the latter was accomplished upon the following "grounds for suspicion," a term Lord Falkland used to justify the act. Aga Mahomed's evidence ran thus:—

"When Ali Ackbar went to Scinde he had no property of any amount. When he sent large sums down then I suspected, and wrote that letter to Government." Now "that letter" to Government was addressed to myself in October, 1845, at the time the writer, Aga Mohamed, being in difficulties, wished to evade Ali Ackbar's call to pay up; it was only at that convenient time for himself that he began to suspect Ali Ackbar, though the remittances he mentioned were made in 1842–43.

In that letter Aga Mahomed explained his position with respect to Ali Ackbar. "I was his father's agent, who was in the service of Government for upwards of 23 years; he always deposited his savings with me, and he was a man of wealth. The moonshee (Ali Ackbar) from time to time drew from me almost all his money, which was to the amount of nearly 35,589 rupees. I beg to enclose your Excellency the list and copy of vouchers from different persons in whose favour he drew the cash."

Aga Mahomed then added his account current with Ali Ackbar, in which, among other items, are the following:—

	Rs.
"Account rendered to his deceased father	35,589
"Cash received after his death	1,151
"Furniture sold by auction	1,203

&c., &c., &c.

Can black and white differ more than this man's two statements made within 18 months? The moonshee went to Scinde without property, yet he drew large sums from funds left in the hands of this very fellow! When the moonshee drew large sums he suspected and wrote that letter; yet two or three years had elapsed between the drawing and the letter! Even in this perjured evidence he was inconsistent before the court, for on his examination he admitted that Ali Ackbar "traded out!" With what? He must have had the means; he could not trade without capital and profits, and Aga Mahomed was his banker. All this was nothing to a Government resolved upon the ruin of the unfortunate man. Mark the conclusion.

"We (the Council) have no positive proof of the fact being as Aga Mahomed states in the above evidence; he surmised it to be the case; but altogether I consider that such strong corroborative grounds for suspicion exist against Ali Ackbar that I cannot bring myself to believe in his innocence." And so he was ignominiously dismissed the service! This was not all; he had been for above a year previously suspended from his office, without pay or means of subsistence. Why, even condemned felons are fed! Now ruined by the law, crushed and insulted by an unjust Government, he goes forth a beggar.

Had this cruel conduct been continued by the Bombay Government against a servant so distinguished, it would probably have added his death to the pecuniary ruin which it has inflicted upon him as the reward of signal service during a long course of years. This once athletic man's health was broken down by the persecution; and a letter received from Kurrachee in 1849 contained these words, "The news of your appointment has saved the moonshee's life;" and it is a very strong indication of the nature of the proceedings of the Bombay Government, that the instant the news of my nomination as Commander in Chief reached Bombay, the moonshee was in haste condemned on Lord Falkland's "suspicions."

Thus, because Willoughby and Reid raised his Lordship's "suspicions," an old and faithful servant of the public, distinguished for zeal and activity in peace, and gallantry in the field,

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is to be ruined for ever; this makes the blood boil. Lord Falkland does not know the moonshee; I know him perfectly. He is an honest man, and the whole of this shameful business has been a dishonourable contrivance to which Lord Falkland has lent himself, in ignorance it is to be hoped.

The Bombay Government put forth public notices through the police at the three principal towns in Scinde, viz., Kurrachee, Hyderabad, and Shikarpore, to encourage natives to accuse the moonshee! Everybody at all acquainted with India must be aware of the turpitude of this act. It was to invite false swearing and every sort of foulness; a more grossly flagitious act never was committed by a British Government. Messrs. Reid and Willoughby expected to produce a host of accusers against the moonshee, and thus obtain colour for concocting some charge against me. And with this vile motive, prosecuted these vile proceedings against him for a year and a half, and finished by depriving him of his appointments, because Lord Falkland "considers" that he has "grounds for suspicion"! A suspicion of what? Of having taken presents!!! It were better not to examine too minutely into such question in Bombay, if suspicion is to be taken as proof. Suspicion! Why Willoughby and Reid are not only pointed at, but absolutely and distinctly declared by natives of Baroda to be the recipients of bribes from the Guicowar, and that declaration, with the sums specified, are to be found in the Parliamentary book on Baroda affairs!

From the Under Secretary of State for India, to *Mirza Ali Ackbar*; dated 14 October 1858.

Sir,

I AM directed by the Secretary of State for India, in Council, to acknowledge the receipt of your letter of the 28th ultimo, and to inform you in reply, that your letter of 7th May, to the Court of Directors of the East India Company, relating to the same subject, having been forwarded to the Government of Bombay for their observations, which have not yet been received, Lord Stanley is not at present prepared to enter into the merits of your case.

I have, &c.

(signed) *George Clerk.*

From *Mirza Ali Ackbar*, to the Secretary of State for India; dated 11 November 1859.

Sir,

I BEG most respectfully to call your attention to two letters addressed by me, one on the 7th of May 1858, to the Secretary of the late Court of Directors of the East India Company, the other to Lord Stanley on the 28th of September in the same year, and to the replies given to me, one by Mr. Dickinson on the 24th of May, and the other by Sir George Clerk.

In the letter of Mr. Dickinson, I was informed that my first letter and the documents which accompanied it, had been transmitted to the Bombay Government for their observations. In Sir George Clerk's letter, I was then informed, that as no reply had then been received to the reference to the Bombay Government, no decision could yet be given on the claims I had preferred.

As no communication has since been made to me, and as a period of 18 months has elapsed since the reference to Bombay, I trust that you will not consider me premature in now requesting your attention to my case, and that you will permit me very briefly to refer to the position in which it stands.

I have complained of an unjust dismissal from the office of moonshee to the Government of Scinde, an office in which I had long and faithfully served the British Government, and I asked for such compensation as might be thought suitable. I also asked for the pension to which my services clearly entitled me, which Sir Charles Napier had personally solicited for me, and which I could have obtained, but for the proceedings of which I complained. Above all, I asked that justice might be done to me against a most unjust and unfair attack upon my character, which, in a Return to the House of Commons, had been published from the papers of the India House, without the slightest opportunity being given me of defending myself against such an attack.

My dismissal took place on the 1st of June 1849. In 1855, after some previous attempts to obtain information and redress, I sent my memorial to the Court of Directors, claiming redress. In the month of June 1857, I finally received a refusal of interference.

In the beginning of last year, circumstances of a very unusual character, gave me a right of appeal on grounds of strictest justice to the Court, and the same circumstances supplied me with the means of proving beyond all doubt, that all the decisions against me have been founded upon a plain and palpable mistake.

I was left in ignorance of the grounds upon which my appeal for redress had been refused, until in the beginning of last year, a motion was made by Sir De Lacy Evans in the House of Commons, I know not at whose instance, in consequence of which papers connected with my dismissal, were returned to Parliament, and printed and published by order of the House.

I read these documents with amazement. I then found the decision of the Bombay Government and of the Court of Directors rejecting my claim, had been founded on a report from Mr. Frere, which it is not too much to say, was framed in an entire misapprehension of the facts of the case.

This was not all. This report of Mr. Frere, travelling entirely out of the case submitted to him, made attacks upon my general conduct and character, utterly unsustained by any single fact.

This libel upon me being published and circulated by order of the House of Commons, I have no remedy. These statements, contrary to fact, were circulated to the public apparently with the joint sanction of the House of Commons and the India House. They have, as I can prove, done me the most serious injury.

It was under these circumstances, that I addressed to the late Court of Directors the letter of the 7th of May. In the observations that accompanied that letter, I made it a matter of demonstration, as plain as the comparison of two paragraphs of printing, that Mr. Frere's statements were refuted by the very documents upon which his report professed to be founded. I was able, by the help of these documents, to do more. I demonstrated beyond the possibility of censure or cavil that the decision of the Bombay Government rested on, I will not say was obtained by, an utter misrepresentation of the proceedings of a court of justice. That either by accident or design, partial extracts from these proceedings were supplied to the Bombay Government, which, in affidavit of my own and the evidence of another witness, appear to the members of the Bombay Council to have a meaning strictly contrary to that which was their real purport.

I repeat distinctly all this is found in the papers, which on the 7th of May in the last year, I laid before the Court of Directors. I mean that is not matter of inference or reasoning; but that any person reading the minutes of the Bombay Council, and comparing them with the records to which I refer, will see with his eyes the mistakes into which that Government were led.

I say also that I have equally proved that the observations made by Mr. Frere are in contradiction to all the facts as they appear on the very documents upon which his report is founded.

It was under these circumstances that I then appealed to the Court of Directors to do me a late and tardy justice, by reviewing a decision which I have clearly shown to have been founded in mistake.

I now make the same appeal to you. Another year and a half has been lost in one of these references to India which delay justice in every Indian's case.

When my first memorial was presented on the 27th March 1855, in England, a reference to India delayed any decision on it for more than 27 months. The matter is now brought to a narrow issue. I have given my proofs, in which I show that the grounds assumed by every one of those who condemned me, rested in an entire misrepresentation of the facts. If this be so, surely it is the plainest justice that the condemnation should be removed. If I am perverting the truth, it can be discovered in half-an-hour's examination of the documents to which I refer.

I am sure, Sir, you will feel that a delay of justice may amount to a denial, that life, and health, and energy may be spent in efforts to overcome these delays, which wear down the applicant, and I now with confidence submit my case to you. I am confident that when you read the documents to which I refer, you will not think that I have made too much of its strength, and I trust you will think that I ought now to receive the reparation for which I have asked, and that some means should be taken to do justice to my character against the imputations which have been circulated in the report of Mr. Frere.

For convenience sake, I venture to enclose to you a printed copy of my letter of the 7th of May, and the accompanying reply to Mr. Frere.

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I found the publication of the Parliamentary Papers so injurious to my character, that I was compelled to print my reply for private circulation among my friends.

I also enclose copies of my letter of the 28th of September 1858, with the accompaniments.

You will not fail to observe that the charge upon which I was dismissed was investigated by two successive authorities in Scinde. That both Sir Charles Napier and Mr. Pringle were satisfied on the subject, and that their decision was set aside by the Bombay Government entirely on the faith of the supposed effect of evidence given in a civil cause in the Supreme Court of Bombay, evidence which unfortunately was so brought before them as to bear a meaning entirely opposite to what is really established.

This evidence was thus used behind my back, and I have conclusively shown that had I been given the opportunity, very few words of explanation from me would have entirely removed the false impression which was produced.

Under these circumstances, I trust you will consider that I have clearly established a claim to the redress for which I have asked.

I have, &c.
(signed) *Mirza Ali Ackbar.*

FROM the Under Secretary of State for India to *Meerza Ali Ackbar*; dated 2 December 1859.

Sir;

I AM instructed by the Secretary of State for India to inform you, in reply to your letter of the 11th ultimo, that the Government of Bombay will be again directed to submit any observations which they may have to make upon the subject of your memorial, forwarded to them with the Court of Directors' Despatch of the 16th of June 1858.

I am, &c.
(signed) *G. Clerk.*

(No. 43.)

FROM the Secretary of State for India to the Governor in Council, Bombay; dated 8 December 1859.

My Lord,

I TRANSMIT herewith, for such observation as you may have to offer on it, the enclosed copy of a memorial from Mirza Ali Ackbar, in continuation of that which was forwarded to you with the Despatch of the Court of Directors, dated the 16th June (No. 16) 1858, and I have to request that this reference may be disposed of with as little delay as possible.

I have, &c.
(signed) *Charles Wood.*

EAST INDIA (MURZA ALI AKBAR)

COPY of further Correspondence respecting Murza Ali Akbar (in continuation of Parliamentary Paper, No. 159, of Session 1858)

(*Mr. Digby Seymour.*)

Ordered, by The House of Commons, *to be Printed,*
4 *June* 1860.

352.

Under 8 *oz.*

EX. C. 57

EAST INDIA (COUNCILS).

EX. H. 87

RETURN to an Address of the Honourable The House of Commons, dated 4 June 1861;—*for*,

A COPY "of the DESPATCHES from the Governor General of *India* to the Secretary of State for *India*, dated the 9th of December 1859, the 15th of January 1861, and the 26th of January 1861, respecting the CONSTITUTION of COUNCILS in *India*."

India Office,
5 June 1861.

J. HAWKINS,
Secretary, Legislative Department.

(*Sir Charles Wood.*)

Ordered, by The House of Commons, *to be Printed*,
5 *June* 1861.

COPY of the DESPATCHES from the Governor General of *India* to the Secretary of State for *India*, dated the 9th of December 1859, the 15th of January 1861, and the 26th of January 1861, respecting the CONSTITUTION of COUNCILS in *India*.

The Governor General of *India* to the Secretary of State for *India*.

Camp Agra, 9 December 1859,
No. 5, Home Department.

Sir,

I HAVE the honour to enclose a copy of a letter of the Lieutenant Governor of Bengal, dated the 14th of October. It is an answer to the call which Her Majesty's Government desired the Government of India to make upon the Honourable Mr. Grant for his opinion of the present plan for conducting the legislation of India, and regulating the proceedings of the Legislature, compared with the plan which immediately preceded it.

I also enclose an answer, dated the 3d ultimo, from the Chief Justice, Sir Barnes Peacock, to a like call made upon his Honour.

2. Although I am not able to give any help towards a comparison of the two plans, having had no experience of the earlier one, which from 1854 has ceased to be in operation, I entirely agree in the opinion of the Lieutenant Governor that it would be impossible to revert to it. To do so would be to throw back upon the Governor General in Council duties which are increasing in importance and weight, and which will continue so to increase; and the Governor General in Council must not, in fairness or in sound policy, be required to take upon him any addition to the burden which he already bears.

3. I share the opinion of the Lieutenant Governor that, for the reasons given by him, the Advocate General ought to have a seat in the Legislative Council; I consider this quite indispensable; and I agree in thinking that additional members, not in official employment, should be nominated to it.

These are the first changes which I should wish to see made, if it be assumed that the present constitution of the Legislative Council is to be maintained.

4. I can confidently confirm the statement of the Lieutenant Governor [redacted] important work has been done by the Legislative Council in a very [redacted] manner; but this does not lead me to the conclusion that the satisfactory [redacted] form, is the best legislative machinery that can be given to India. I will, therefore, state what appear to me to be [redacted] chief faults of the existing system, premising that I draw my opinions from observation of the working of the Council during a time when it has had to deal with questions of more than ordinary importance to local as well as to general interests in India.

5. I think it is to be regretted that the Legislative Council was, on its first creation, invested with forms and modes of procedure so closely imitating those of Parliament.

It can scarcely be contended that the 136 standing orders by which the proceedings of the Council are ruled are necessary for the guidance of an assembly so small in number, and composed as this Council is composed. Observances which are indispensable to securing order and opportunities of complete discussion in a House of 656 Members, free to come and go at their pleasure, are not needed in a Chamber of 12, nearly all of whom must be always at their posts. They have a tendency to delay business, which in a body so limited as the Legislative Council, would be better conducted by following in the main the simpler forms of a Select Committee of Parliament, or of a Royal Commission. These forms would equally admit of oral discussion. Dissentient opinions

opinions would be recorded as easily as now, and more clearly than by speeches. Work of detail, such as the correction or preparation of Bills, and the examination of petitions and representations, would still be entrusted to select committees of the Council.

There are some delays which could not be curtailed so long as legislation is confined to Calcutta; those, for instance, which arise from the necessity of giving ample notice to every part of India of any measure which will specially affect its interests; but there are others which are needlessly prolonged by the operation of the Standing Orders.

6. Moreover, I am of opinion that the application of so much of Parliamentary form to the proceedings of the Council has not only been of no advantage in the conduct of business, but has placed the Legislative Council in a false position. More is expected from it in the way of debate and exposition than is ordinarily possible in so small a number of members, most of whom are in constant official communication with each other. Even within the Council itself, the assumption of the procedure of the House of Commons seems to have had a misleading effect, and to have caused an impression that reports and returns should be ordered by the Council from the local administrations, and that measures should be introduced independently of the Executive Government.

Certainly the Standing Orders which, on the formation of the Council, were passed in India and approved in England, do not bar this: but I believe that it was not intended that such action should be given to the Legislative Council when the last change in it, or rather the enlargement of it, was enacted by Parliament in 1853.

7. You are aware that, in 1856, the Legislative Council demurred to carry out the orders of the Home Government in legislating regarding the office of the Administrator General. I do not know in what light the position then taken by the Legislative Council has been viewed by the Home Government, and I am not prepared to say that that position was, as the law stands, an unsound one; but, if it is not intended that the Council should retain it, the sooner this is declared authoritatively the better.

8. With regard to the Standing Orders, so far as they affect publicity, I think that, if it be assumed that the present mode of transacting business by formal debate is the best, the admission of both strangers and reporters for the press is right; although, as suggested by the Lieutenant Governor, security should be had for the competency of the reporters. But if the simpler forms of a committee are adopted, publicity should be given to the proceedings of the Council by periodical, but frequent, official reports of the measures in progress or passed, of amendments proposed, of evidence taken, of dissentient opinions recorded, and of other points of interest. The debates of the Council would no longer be reported in full, and only the official reporters would be present; but oral discussion, to which too much importance cannot be attached, would be at least as free as at present, and I see no reason why strangers should not generally be admitted.

9. But the constitution of the Legislative Council is still more important than its forms of procedure; and although a return to the system which existed before 1854 is impossible, I think that it well deserves to be considered whether a partial return to the still earlier system which prevailed before 1834 is not advisable.

There is difficulty in ascertaining precisely the recognized relations of the Governments of Madras and Bombay to the Governor General in Council, in matters of legislation, previously to the Act of 1833. A memorandum on this subject by the Secretary is enclosed. It is clear, however, that, practically, the two Governments exercised much authority in legislating for their respective Presidencies, and that the interference of the Government of India was not frequent; and I recommend that this system, with certain checks, be revived.

10. Of the whole Legislative Council, it is very improbable that, under its present constitution, more than two members will at any time be found possessed of practical knowledge of either of the Presidencies of Madras and Bombay. One representative member for each is secured; and, at the present time, Bombay has the unusual advantage of contributing two members of its

service to the Council of the Governor General; but, as regards Madras, there is no member of the Legislative Council who has had experience of its systems and requirements, except its representative, one amongst 12.

There is no doubt that the introduction of a single member from each local government has been, as the Lieutenant Governor of Bengal observes, a great advantage. But, although an improvement has thus been made in the system antecedent to 1854, I do not think that it has been carried far enough. I do not think that, the principle of representing the local governments in the Council being once admitted, the Governments of Madras and Bombay can be reasonably expected to be satisfied with the share which they at present have in any legislation directly concerning their own Presidencies; and I believe that, by giving them a much larger share in it, useful local measures may be facilitated and expedited, without leading to any interference with measures of a general character, or with the authority and responsibilities of the Governor General in Council.

11. In India it is quite as important that a law should be administered in a hearty and willing spirit as that it should be a good law; and it will not tend to promote this hearty administration, if executive officers feel that they are working a law of which their own government does not wholly approve, or in framing which it has had little part. It may be said that this feeling must have existed in the Madras and Bombay Presidencies for the last five-and-twenty years, ever since legislation was concentrated in Calcutta. I believe that it has existed; but so long as the legislation was conducted by the Supreme Executive Government closely within its own Council Chamber, the feeling was comparatively a suppressed one; whereas, now that a representation of the two Presidencies in the legislative body is recognized by law, the feeling that the modicum of representation admitted is insufficient has become strong and unconcealed. Without attaching weight to hasty and mistaken complaints made of the proceedings of the Legislative Council, I cannot be surprised that Madras and Bombay should see with impatience their questions of internal administration, municipal questions, and matters of police, discussed and decided in the minutest detail by a body in which officers of Bengal, or acquainted with Bengal alone, have so strong a preponderance.

12. There appear to be only two modes of giving to Madras and Bombay a larger share of local legislation; either by increasing in the present Legislative Council the number of members drawn from those Presidencies, or by breaking up the Council into three Councils.

13. The first mode is open to the objection that the cost of the Legislative Council would be greatly augmented by it. You cannot bring Madras and Bombay civilians, or English gentlemen engaged in commerce or at the bar in those Presidencies, or natives of them, to Calcutta, without paying them high salaries. In fact, unless considerations of expense are to be put aside, a Council sitting in Calcutta admits of no extension beyond the addition to it of a certain number of residents in or near to Calcutta. This addition is in itself desirable; but it will not render the Council more competent to deal with the affairs of the distant Local Governments, nor will it reconcile the communities, official and non-official, of the other Presidencies, to the authority of that body.

This inaptitude for expansion is a very serious defect of the present system.

14. The second mode is, therefore, the one which I recommend; and I will take the liberty of suggesting how, as it appears to me, it might be most conveniently and effectively adopted.

15. Before doing so, however, I wish to say a few words on the present expenditure in legislation. The annual cost of the Legislative Council is shown in an accompanying paper. Speaking roundly, it amounts to nearly 30,000 *l.*, of which 20,000 *l.* represents the salaries of the four paid members, and the remainder goes to defray the expense of clerks, clerical establishment, servants, house rent, &c

Without contesting the opinion of the Lieutenant Governor of Bengal, that, considering the value of good legislation to India, the Legislative Council cannot be pronounced a costly machine, it is right to examine whether the expenditure actually incurred is necessary, and whether it is judiciously applied. I cannot affirm that it is so.

16. The

16. The main expense consists of the four salaries of 5,000 *l.* a year each paid to the representative members of Madras, Bombay, Bengal, and the North-West Provinces; the eight members holding their seats *ex officio*, and receiving no salaries as Legislative Councillors.

Measured by the labour and responsibility which falls to a member of the Legislative Council, either absolutely or in comparison with the labour and responsibility of other posts of like emolument, I think that the salary of 5,000 *l.* is unnecessarily high. In saying this, I must not be supposed to underrate the value of the aid which the Council has received from its representative members who, from the first, have taken the labouring oars, and to whose intelligence and earnest assiduity it is mainly owing that so much recent good work appears on the pages of the Indian statute book. But it deserves to be considered, whether representative members may not fairly be obtained at a less cost; the more so, because, so long as a salary of 5,000 *l.* is given for the discharge of no other duty than that of a Legislative Councillor, it cannot be expected that gentlemen independent of the Government, and engaged in their own business or professions, will receive with goodwill an invitation to take upon themselves that duty without salary, or with a very insignificant one. For myself, I should feel that, in asking them to do so, I made an illiberal and unfair proposal.

17. I know no good reason for assigning any salary to a representative member, as such. The Government may claim to be served by its officers in any part of the country as may be most expedient; and if fair provision be made against the officer being a loser, immediately or prospectively, by the temporary transfer of his services from his own province to Calcutta, no difficulty will be found in obtaining efficient representation.

Therefore, where a representative member of a local Government is required in the Council, I recommend that the following course be adopted:

That the head of the local Government should select one from amongst the civil officers of his province, and that this officer should join the Legislative Council in Calcutta, carrying with him the salary of the appointment from which he is withdrawn, and receiving, in addition to it, a deputation allowance of 740 *l.* a year,* that being the amount which an officer summoned to officiate in an appointment of which the salary is 5,000 *l.* a year, would now receive.

That the seat in the Legislative Council should be held for a period less than five years. I think that two years would suffice; and that, at the end of that time, the officer should return to his own Government, and resume his appointment, or one at least equivalent to it, his own appointment having been held during his absence by an officiating officer.

18. The cost of this mode of representing a local Government in the Legislative Council would be confined to the deputation allowance, say, 750 *l.* a year, and to the increase of the salaries of the officers who would be called to officiate in higher grades than their own during the absence of the representative. This last item would vary accordingly as the representative might be taken from a higher or lower post; but, taking the extreme case, even if he were of the rank of a Judge of the Sudder Court, or a member of the Revenue Board (and it might often be expedient to take him from a much lower rank), the expense would not exceed 2,500 *l.* a year. The average probable expense may be reckoned at 2,000 *l.*† a year. Thus the cost of a representative member would stand

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* *Note.*—Or so much less as would suffice to make up his emoluments to 5,000 *l.*, and no more.

† *Deputation Allowances.*

Commissioner acting for member of Board	*Rs.* 550 a month.
Judge acting for Commissioner	500 „
Collector and magistrate acting for Judge	450 „
Joint magistrate acting for collector and magistrate	400 „
Assistant acting for joint magistrate	200 „
Total *Rs.*	2,100 a month.
Or £.	2,520 a year.

This amount would be diminished, if the officer appointed be of lower rank than a member of the Board, or if the number of acting appointments be fewer.

stand at 2,750 *l.* instead of at 5,000 *l.* a year. No high salary would be attached to a seat in the Legislative Council; and the Government might, with a better grace than it can now assume, invite the aid in legislation of independent unpaid gentlemen. I am sure that such aid will lose much of its efficacy if it be not unpaid.

19. It would probably be a consequence of this plan that the post of representative member would be sometimes filled by civil officers less advanced in the service than has hitherto been the case; and so far, there would be some loss of useful experience in the representative members; but I think that this advantage will be more than counterbalanced by the larger field of choice which will be opened to the head of the local Government (for the practical effect of the high salary is to cause the appointment to be viewed as a fit conclusion of a long and honourable career, and so to narrow that field); and by the fact that each representative member, whilst advising on the law, will feel that he will before long have to resume his function of administering it. Moreover, it will, I think, be found that, under the system which I have proposed, there will be no difficulty in securing representative members whose length of service shall range up to 20 years.

20. I now proceed to suggest how the breaking up of the present Legislative Council into three Councils can be most conveniently and effectively carried out.

The Legislative Council, as now existing, is composed of—

The Governor General.
The Commander in Chief.
The four ordinary members of the Governor General's Council.
The Chief Justice.
A puisne Judge.
Four representative members (paid) from Bengal, Madras, Bombay, and the North-Western Provinces.

Twelve members in all, besides the two members which the law allows the Governor General, with the sanction of the Home Government, to appoint from the service, but who have never yet been appointed.

I propose that the Legislative Council in Calcutta, presided over by the Governor General, which would legislate on all matters of Imperial and general policy, as well as on local matters relating to Bengal and to the Provinces, under the direct supervision of the Governor General in Council, should consist of,—

The Governor General.
The Commander in Chief.
The four ordinary members of the Governor General's Council.
The Chief Justice.
The Lieutenant Governor of Bengal.
The Advocate General.
A Judge of the Sudder Court.
An officer of the army staff at the Presidency.
A representative member from the North Western Provinces.
Three members not connected with the Government.

Making 15 members in all.

21. No remark is necessary as regards the first seven members. As regards the rest, I would observe as follows:—

(*a.*) *The Lieutenant Governor of Bengal.*—I can conceive no reason why this high officer, who must always be a man of mark and ability, and of the ripest experience, should not be called in to the Council which makes the laws for the vast and rich territory which he administers.

(*b.*) *The Advocate General.*—For the reasons given by Mr. Grant, I consider it absolutely necessary that, even if no other change be made, this officer should, now that the fourth member of the Governor General's Council is no longer of the legal profession, have a seat in the Legislative Council.

(*c.*) *A Judge of the Sudder Court.*—I recommend the substitution of this officer for one of Her Majesty's puisne judges, because, with the Chief Justice and the Advocate General present, the law of England will be sufficiently

sufficiently represented, and because the want of a representative of Indian law, acquainted with Indian procedure, has been found inconvenient.

(*d.*) *An Officer of the Army Staff at the Presidency.*—The great increase of English troops on the Bengal establishment will make the continued residence of the Commander-in Chief in Calcutta less practicable than ever; and it is occasionally useful to have the opinion of an officer actually engaged in carrying on the discipline of the army. But, as it would not be necessary to call an officer of this description into the Council, except when it is likely that the Commander in Chief will be long absent, it would suffice to leave it to the Governor General to nominate him when necessary. He should be eligible from the army of the line, or from the local army.

(*e.*) *A Representative Member from the North Western Provinces.*—This member would be nominated by the Lieutenant Governor of the North Western Provinces, under the arrangement proposed in the 17th paragraph of this Despatch.

(*f.*) *Three Members not connected with the Government.*—These should be nominated by the Governor General, who would find them amongst the English gentlemen engaged in commerce or at the bar in Calcutta, or amongst native gentlemen. It is expedient that the number which may be lawfully appointed (it ought not to be less than three) should be declared; but there should be no obligation to keep all the appointments full.

The term of appointment would be the same as that for which the representative member may be appointed.

22. A Legislative Council in Calcutta, thus composed, would, I believe, be found as efficient for its purposes as any that can be constructed in India. It would entail no expense beyond the deputation allowances consequent on sending an officer of the North Western Provinces to Calcutta, to represent his Government; and this expense of about 2,750 *l.* a year would stand in the place of 5,000 *l.*, the present salary of the member for the North Western Provinces. A representative member for Bengal would not be needed, seeing that the Lieutenant Governor and one of the sudder judges would have seats at the council, and thereby a further annual saving of 5,000 *l.* would be effected; but it might be necessary, in consequence of the employment of part of a sudder judge's time in the Legislative Council, to give occasional assistance to the sudder court in the shape of an extra officiating judge. In that case, which would not always occur, the expense of deputation allowances would be about 2,000 *l.* a year, in place of 5,000 *l.*, the present salary of the member for Bengal.

23. When it shall be thought advisable to bring into the council a representative of the Punjab (which I do not at present recommend), the cost of doing so will be no greater than that of providing for the presence of a representative of the North Western Provinces.

24. The annual cost of the clerical establishment, and the other contingent expenses of the Legislative Council, come to a larger sum, more than 9,000 *l.* This will be gradually reduced in Calcutta, if the Council sitting there ceases to be the sole Legislative Council for all India; but new expenses of the same nature, though much less in amount, will have to be met at Madras and Bombay.

25. The Legislative Councils for Madras and Bombay would, I think, be advantageously composed as follows:

The Governor.
The Commander in Chief.
The two members of the Governor's Council.
The Chief Justice.
The Advocate General.
A Judge of the Sudder Court.
Three members not connected with the Government.

Ten members in all.

26. I have not proposed an officer of the army staff as a member of these Legislative Councils; for, although the absence from the local Executive Councils of all military members, except the respective Commanders in Chief, might appear

to make the presence of such officers in the Legislative Councils more necessary than in Calcutta, I am of opinion that all legislation respecting the armies in India (and the occasions for such legislation are very rare) ought to proceed from the Supreme Government. Besides, the Commanders in Chief of Madras and Bombay have not the same strong and frequent reasons for being absent from the seat of Government as has the Commander in Chief in India.

27. Neither have I proposed representative members of any kind. At Madras I know no occasion for any; and Scinde does not appear to require one at Bombay, more than Oude or Pegu require them at Calcutta. But if, on account of the smaller number of members in the Councils of the Governors of Madras and Bombay, or for any other reason, the Governors of those Presidencies should find that additional aid in their Legislative Councils is necessary, I would recommend that they be empowered to give a seat in the Legislative Council to one officer of the civil staff of the Presidency resident at the seat of Government.

In any case, the whole of the 10,000 *l.* a year which now constitutes the salaries of the representatives of Madras and Bombay at Calcutta may be saved to the State; making, in the whole, a reduction of more than 15,000 *l.* a year.

28. It only remains for me to describe the line of demarcation which should be drawn between the functions of the local Legislative Councils, and those of the legislative body over which the Governor General would preside.

It is not easy to define this line closely in words, but I do not think it is difficult to provide, without vexatious interference, that in practice it shall be observed.

29. All measures relating to general finance, customs, relations with foreign or native States and their subjects, the Articles of War, the Indian armies, ecclesiastical matters, emigration, substantive civil and criminal law, judicial procedure, maritime and mercantile law, foreign trade, coinage, English law as administered in the Supreme Courts, post office, weights and measures, State offences and prisoners, railways and telegraphs, patents, copyright, and the like, should be introduced into and passed by the Legislative Council of the Governor General.

All measures of local administration which would affect the finances of the country, either by increase of expenditure or by loss of revenue, should be submitted in draft for the preliminary sanction of the Governor General in Council (not of the Governor General's Legislative Council), before being laid before the local Legislative Council for discussion.

All Bills whatever, after they have been passed, should receive the signature of the Governor General before they become law, as is the case at present, but with this difference, that in the event of the Governor General withholding his signature, or, in other words, putting his veto on the Bill, it should be incumbent upon him to communicate to the local Government his reasons for so doing. Under the law as it stands, the Governor General may veto a Bill, and give no reason.

30. The list of the subjects regarding which any laws that may be requisite should be introduced into, and passed by, the Legislative Council of the Governor General, seems long; but the majority are subjects upon which a necessity to legislate seldom occurs, and nearly all are such as to need that laws respecting them should be uniform throughout India. Cases, moreover, may present themselves, even under the first and most important head of general finance, in which it may be very expedient to commit the framing and enacting of a measure to the local Legislature; but this should be done on each occasion by the special direction of the Governor General in Council, who shall have power, as the occasion arises, to make over the legislation upon any subject to the local Legislative Council, with or without limitation as to the scope of the measure.

31. With regard to the preliminary sanction of the Governor General in Council to measures of local administration which affect the finances, it may be expected that the cases in which it would be withheld would be very rare indeed if the local Government, before framing its Bill, be careful to ascertain to what extent its principle or provisions, so far as these may affect the finances

or

or other general interests of India, will be admitted by the Governor General in Council; and if it be understood (as it ought to be clearly understood and provided) that the Governor General in Council takes cognizance of the Draft Bill only in so far as it touches the general interests of the empire, and not in its bearing upon local administration.

To take a recent and important example:—If the Madras Police Bill which was lately passed had come up for consideration under the system which I have described, the Governor General in Council would have examined the draft of it with reference only to the increase of expenditure which it would entail, and to any countervailing decrease of cost in the army of Madras. The views of the Governor General in Council, confined in this case to the financial bearings of the question, would have been obtained by the Government of Madras before drawing the Bill, and the draft, if it contained nothing contrary to those views, would have received the preliminary sanction immediately, and as a matter of course, without any question being raised as to the constitution or organization of the police, which would be a matter for the decision of the Government of Madras and its Legislative Council alone.

32. The occasions upon which the Governor General would withhold his signature from a Bill that had passed the local Legislative Council would be still more rare; probably none would ever arise, unless a Bill had been much changed in its passage through the local Council.

But I hold strongly to the principle, that no Act of any legislative body in India should become law without the cognizance and consent of the head of the Government of India.

33. It cannot be objected to the above scheme that it would cause delay. On the contrary, time would be saved by it, indirectly, by diminishing the occasions for correspondence between Calcutta and the other Presidencies upon the points of detail which arise during the progress of a Bill through the Legislative Council in Calcutta, and directly, by enabling the local Legislative Councils at once to curtail the period which, so long as all legislation proceeds from Calcutta, must be allowed for giving publicity to Bills affecting the other Presidencies before those Bills are carried through all their stages.

34. I have not proposed this scheme as calculated to improve our laws in India; I believe that the laws which would be made under it would be neither much better nor much worse than those which we now make; but I think that such a system would stimulate and expedite the amendment of the law in each Presidency, by giving larger and freer action to the Government of each, and that it would tend to convert jealousy and antagonism (no matter whether justly or unjustly felt) into wholesome rivalry and co-operation, without diminishing the responsibility of the Governor General in Council in any matter for which he ought to be responsible, and without weakening the power and authority which must never be separated from that responsibility.

I have, &c.
(signed) *Canning.*

The Lieutenant Governor of *Bengal* to the Governor General of *India* in Council.

My Lord, Fort William, 14 October 1859.

I HAVE the honour, in obedience to the commands of your Lordship in Council, most respectfully to report the opinion which my experience has led me to form of the present plan for conducting the legislation of India and regulating the proceedings of the Legislature, compared with the plan which immediately preceded it.

2. The change introduced by the Act of 1853 was to enlarge the Council, when acting in its legislative capacity, by the addition of new members, called legislative members, of whom two are English judges of the Calcutta Supreme Court, and the others are appointed severally by the local Governments. At the same time, the fourth ordinary Councillor, who held before only the corresponding office of legislative member, was made a member in the executive branch as well as in the legislative branch. Thus, by the change in question, the Executive Government was enlarged by one member, and the Legislature by six members. The constitutional effects of this change are—

1st. That, in a full Council, if the Commander in Chief, the Governor General, or any single member of the Executive Government, is absent, a majority of the Legislative Council consists of members not concerned in the administration of the Government;

2d. That, on every legislative question, the Council has one member at least to inform it upon points of local bearing;

3d. That, in all cases where the convictions of a local Government and its representative member do not differ widely, that is to say, in the great majority of cases, every local Government has now a means of impressing upon the legislative body its own views on questions peculiarly affecting its own provinces, in a manner infinitely more lively and effective than by written communication; and—

4th. That what may be called the English law element of the Council is largely increased.

3. The following changes of practice in the conduct of legislative business have been introduced in consequence of the enlargement of the Council:—

1st. All discussion is oral, instead of being, as before, when there was any discussion at all upon legislative questions, chiefly in writing;

2d. For all the work of minute correction, and of examining the petitions and representations received from without concerning Bills in progress, also for much of the work of preparation, a small select committee is now available, instead of only a single member as before; and—

3d. The legislative business is now conducted in public, instead of in secret, as before.

4. I will speak of what I have called the constitutional effects of the change first.

5. The first in order, whereby the majority of the Legislature is no longer connected with the Executive Government, has more importance in appearance than in reality. As the Council is constituted, members of both classes must be presumed to have equally the Queen's service and the good of the whole country at heart, to be equally free from the bias of interest or class prejudice, and to be equally intelligent. Therefore, in all matters respecting which a member of the Supreme Executive Government has, from his position, no better means of information, and no other responsibilities than a merely legislative member, that is to say, in the great mass of legislative business, the point is wholly immaterial. In the remaining cases, numerically a very small minority, but, it must be admitted, a minority which may comprise cases of extreme political importance, the effect can be good or bad only in one of two ways; first, in the passing of a law which the Government members wish not to pass; and, secondly, in the not passing of a law which they wish to pass. The first evil is eliminated by the veto of the Governor General. As to the second, I can say that, in my experience, which includes a term of five years, from the first opening of the Council to the 1st of May last, no case of the kind occurred, or seemed the least likely to occur. I anticipate no real evil as ever likely to arise from this circumstance, with any constitution of the Council approaching the present.

6. The second of these effects, namely, the presence always of at least one member who has experience derived from service in any part of India to which any question applies, is manifestly an unqualified advantage. My experience leads me to the conclusion that, practically, this advantage is great.

7. The third of these effects, namely, the presence of members capable of enforcing in discussion the views and feelings of the local Governments, and of following a question in the same spirit through all its phases, is beyond doubt a very great advantage indeed. Whatever happens now to the project of a local Government, and whether the objections of a local Government to any law are maintained or not, it is certain that the arguments of the most distant of these Governments were intelligently discussed and fairly weighed before a conclusion was come to. And not only is the fact so; the local Governments know and must admit that it is so, which puts a stop to much provincial ill-humour. The other day, the Governor of Madras published a violent attack on what he called "the Calcutta Council." The answer given in debate was to remind him that the representative of his own Government was a member of the body attacked, and had been a consenting party to the proceeding found fault with. This seems to have put a stop to attacks in the same spirit, which would not have advanced the public service if they had become habitual. I am of opinion that, amongst many great improvements, this has been the greatest practical improvement effected by the change under review.

8. The fourth of the constitutional effects described, namely, the increased strength of the legal element, as far as my experience goes, has also been an unqualified advantage, and a very great one.

9. In all the above points, the practical results appear to me to have been so perfectly in accordance with what all persons who knew what the former system was, and understood the change made, expected, and could not but have expected, from this change, that it is enough for me to say that, in my opinion, experience proves that the objects of Parliament in making the late change have been successfully attained in practice.

10. I now come to the minor changes of practice, which were not involved necessarily in the constitutional change in the legislative body made by Parliament but which have followed as the natural consequences of the enlargement of that body, and of its partially new composition.

11. The

11. The first of these is oral discussion. From the complete absence of all experience in oral argument amongst Indian official men, the introduction of the experiment was a cause of anxiety to many. But it was strongly felt (and by none more strongly, and upon more sound grounds, supported by large experience, than by Lord Dalhousie) that, with a large Council, the only real question was oral discussion, or no useful and effectual discussion whatever. The result has been that, whereas, before, most legislative questions passed in Council without any discussion, or with very little, now all such questions undergo real discussion. Nevertheless, discussion cannot be indefinitely protracted, but must come to an end when there is nothing new to be said on the subject, or at worst, not long afterwards. On the other hand, I do not believe that any member ever had anything material to say on any question which he was not able to express well enough. Had the case been otherwise, the presence of the legal member, whose professional business is oral discussion, would have made the defeat apparent enough by contrast.

12. The second change of practice is the employment of a small committee, selected for their peculiar fitness with reference to the particular matter in hand, to do what may be called the hard desk-work of legislation, instead of imposing the whole of that burden upon the shoulders of a single man, as formerly. I have had personal experience of five legislative or fourth ordinary members of Council, being all that have ever held that office. They have been gentlemen of the most different, indeed of the most opposite, intellectual qualities; but they have all been men of the greatest ability, devoted to their duties. Four of them are spared to us, and may be consulted. I am quite sure that all four will pronounce that to expect one man to do properly all the work of legislation for India is to expect what is impossible in the nature of things. My own experience certainly is to that effect. On the other hand, I do not wish to be understood as giving evidence that, considering the circumstance that four of the legislative members have had no other work to do, as much progress has been made as could possibly have been made; but I do mean to be understood as giving evidence that work of the first importance has been done in the most satisfactory manner since the new Council was instituted, to an amount altogether beyond what was ever done before. I aver that there is more hard and more useful work in the Acts passed within the last five years than in all those passed during the preceding 20 years. The book of Indian Acts is open, and every one can judge for himself.

13. The third change of practice is the admission of strangers to the meetings of the Council. Perhaps I am not an impartial witness upon this point, for it was upon my own motion (made with Lord Dalhousie's full approval) that this change was introduced. But I must say that nothing has occurred to make me believe that the measure was not a sound and judicious one. Experience, however, has brought me to the conclusion that newspaper reporters ought not to be admitted until they show their ability to report, with reasonable correctness, at least the substance of what is said; and that a qualified short-hand writer should be engaged from England as an official reporter, there being no one here who can write short-hand.

14. On the whole, the present system seems to me, in every point of view, to be an infinite improvement upon the former system, which was comparatively so unsatisfactory that I do not think it possible to revert to it. The present system is no doubt more expensive than the former system, inasmuch as it requires four paid legislative members instead of one. But the question is not, at least it ought not to be, which of the two systems is the cheaper; but, is the present system positively too expensive, considering the value of good legislation to a country so extensive and so populous as British India, which now pays a revenue larger, I believe, than that of any other country in the world, excepting Great Britain and France? In this view, I cannot think it possible to pronounce the Legislative Council a costly machine.

15. I may remark that, as the fourth ordinary member of Council is not now a lawyer, the legistature loses one of its law members, and there is no longer in the Council any lawyer connected with the Executive Administration. I think this will be found extremely inconvenient. There is a class of work to be done which a lawyer only can do, and which the judges of the Supreme Court, whose time is very fully occupied with the business of the Court, cannot be expected to devote themselves to doing. There are also many occasions when the advice and the debating power of a learned gentleman in connexion with the Government are of essential importance. This want might readily be supplied by making the Advocate General a member of the Legislative Council.

16. I may also say that, in my opinion, the addition of a few honorary members to the Council would be, on the whole, beneficial. One or two native gentlemen, and an equal number of European gentlemen not in official employment, would, be in my judgment, a valuable addition to the Council. It would probably cause views to be brought forward which it would be unjust and unsafe to act upon; but, from the free discussion of such views, little harm and much good might be anticipated. The power of creating honorary members should be with the Governor General, and should not ordinarily be used to its full extent.

I have, &c.
(signed) *J. P. Grant.*

The Chief Justice of *Bongal* to the President in Council.

Honourable Sir, Simla, 3 November 1859.

In compliance with a request contained in a letter from his Excellency the Governor General in Council, dated the 16th July last, I have the honour to enclose a memorandum containing an expression of my opinion upon the question proposed by the Right Honourable the Secretary of State for India relative to the merits of the system of legislation in India which preceded, compared with that which followed, the Act of 1853. I regret that, owing to a pressure of business in the Supreme Court after my appointment to the office of Chief Justice, and also in the Legislative Council preparatory to the temporary adjournment thereof, I was unable to forward my opinion upon the subject at an earlier date.

I have, &c.
(signed) *B. Peacock.*

The Right Honourable the Secretary of State for India has done me the honour of requesting my opinion, for the information of Her Majesty's Government, as to the merits of the system of legislation in India which preceded the 16 & 17 Vict. c. 95, in comparison with that which at present exists under the provisions of that Act.

In answering that question, I have no hesitation in stating that, in my opinion, the present system is in every respect preferable to that which existed under the 3 & 4 Will. 4, c. 85. By that statute, the sole power of making laws and regulations in India was vested in the Governor General of India in Council. That body consisted of the Governor General and four ordinary members of Council: the Commander in Chief, if appointed an extraordinary Member of Council, also formed one of the body. Of the four ordinary members, it was directed that three should be appointed from persons in the covenanted service of the East India Company, and the fourth from persons who had never been in the service.

The duty of the fourth ordinary member was confined entirely to the subject of legislation. He had no power to sit or vote, except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right, that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of Government, upon any subject not immediately connected with legislation.

In my own case, I was allowed to see the papers and minutes of consultation in the Home and Legislative Departments: but I was as ignorant of everything that was going on in the Foreign, Secret, Military, and Financial Departments as if I had not been a member of Council. I am not urging this as matter of complaint, but I allude to it merely as part of the system. I always received the greatest courtesy and consideration from the Marquis of Dalhousie and my honourable colleagues, and I believe that I had their confidence; but it was strictly in accordance with law that the fourth ordinary Member of Council should not sit or vote except at meetings for making laws and regulations. It was not necessary that he should be present to form a quorum at meetings for making laws, although he was particularly charged with the duties of legislation. All that was necessary was that the Governor General and three ordinary members should be present.

The following extract from a most eloquent and admirable Despatch of the Honourable Court of Directors, No. 44 of 1834, para. 21, refers more particularly to the duties of the fourth ordinary member:—

"The concurrence of the fourth member of Council may be wanting to a law, and the law be good still; even his absence at the time of enactment will not vitiate the law; but Parliament manifestly intended that the whole of his time and attention, and all the resources of knowledge or ability which he may possess, should be employed in promoting the due discharge of the legislative functions of the Council. He has, indeed, no pre-eminent control over the duties of this department, but he is peculiarly charged with them in all their ramifications. His will naturally be the principal share, not only in the task of giving shape and connexion to the several laws as they pass, but also in the mighty labour of collecting all that local information, and calling into view all those general considerations, which belong to each occasion, and of thus enabling the Council to embody the abstract and essential principles of good government in regulations adapted to the peculiar habits, character, and institutions of the vast and infinitely diversified people under their sway."

The principal share of the duties thus described devolved upon the fourth member, usually, though not necessarily, selected from the bar, whose duration of office was generally limited to the period of five years, who probably had never passed a single day of his life in India, and who was generally on his arrival wholly unacquainted with the native languages. His laborious duties, and the limited period of his holding office, did not allow of his visiting various parts of India, in order to collect local information, or to ascertain, by personal experience, how the laws worked and were administered; and he was unable, by personal communication with the natives, to make himself acquainted with the manners, the feelings, the prejudices, or even the wants or wishes of the people, in legislating for whom he was to take a principal share. I heard much of the corruption of the native police, and of the inefficiency, to say the least of it, of the native judges; and often, when a law was proposed by one person, I was told by another that the police would convert it into

into means of extortion, or that the native judges could not safely be entrusted with the powers which it proposed to confer upon them, or that the law was wholly unsuited to the habits or feelings of the people. I had not the means, on my first arrival in the country, of forming a correct judgment upon these and other similar conflicts of opinion, and I must confess that, when I calmly considered the nature of the duties which I had undertaken, I felt almost appalled and overwhelmed.

Such duties appeared to me to surpass the powers of any one individual, even though he might possess the vast knowledge and the transcendent abilities of some of my predecessors in office. I was determined, if my health permitted, to do everything which indefatigable labour and industry could effect; but this I found was but little. I often thought of the eloquent and forcible language of the Honourable Court of Directors, who, in the Despatch above referred to, in speaking upon the subject of legislature in India, expressed themselves as follows:

"In contemplating the extent of legislative power thus conferred immediately upon our Supreme Government, and, in the second instance, on ourselves; in considering that in the use of this power the difference between the worst and the best of governments mainly depends; in reflecting how many millions of men may, by the manner in which it shall in the present instance be exercised, be rendered happy or miserable; adverting to the countless variety of interests to be studied and of difficulties to be overcome in the execution of this mighty trust, we own that we feel oppressed by the weight of the responsibility under which we, with you, are conjointly laid. Whatever means or efforts can be employed on the occasion; whatever can be effected by free and active discussion, or by profound and conscientious deliberations; whatever aids can be derived from extrinsic counsel or intelligence; all, at the utmost, will be barely commensurate with the magnitude of the sphere to be occupied and of the service to be performed."

I derived much valuable information from the researches and elaborate reports of the Indian Law Commissioners; but that body had ceased to exist before my arrival in India in 1852, and long before the introduction of the new system under the Act of 1853. Much of the time of the other ordinary members of Council was necessarily occupied by executive duties, and it was almost impossible for the Governor General in Council to devote sufficient time at meetings of the Council to consider and discuss verbally the principles and the details of the various laws which were proposed, and the conflicting opinions which were frequently elicited by the publication thereof for general information previously to their being passed; and it was out of the question to attempt to substitute written minutes for verbal discussions upon many of the subjects which necessarily came under consideration.

I was greatly indebted to the late Mr. John Colvin, Mr. Halliday, Mr. J. P. Grant, Mr. Beadon, and to the Government pleader, Ramapersaud Roy, for most valuable assistance which their practical experience enabled them to afford, and which they were always most willing to render. But they all had many other duties to attend to, and I should often have found it a great advantage to have had the benefit of verbally discussing matters with a body of gentlemen selected for such duties as those for which the Indian Law Commissioners were appointed, and to have had the benefit of their researches and experience.

By the Act of 1853 the duties which, under the former Act, rested principally upon the fourth ordinary member of Council, are performed by many.

The Governor of each Presidency, and the Lieutenant Governor of each Lieutenant Governorship, is empowered to appoint a Legislative Councillor. The Legislative Councillors so to be appointed must be members of the service of a certain standing, and consequently must have passed a considerable time in India, must be conversant with the native languages, and, when selected with reference to their peculiar qualification for the duties of the office, must necessarily be able to bring to bear upon every subject connected with legislation for India much useful knowledge and practical experience; and, in questions peculiarly affecting their respective Presidencies, must have the advantage of being practically acquainted with local usages and the peculiar habits and prejudices of the people.

Such a system has many advantages over that which preceded it, even whilst the Indian Law Commission was in full operation, for the Legislative Councillors have the power, which the Law Commissioners had not, of proposing any law which they may consider necessary or beneficial, of opposing any law which they may deem unnecessary or injurious, of supporting their opinion by argument in Council, and of voting upon every subject which comes under discussion. The Legislative Council is not diminished in other respects; for every member of the Executive Council, including the fourth member, who has now the power to sit and vote at all meetings, is also a member of the Legislative Council. It is simply increased by members of practical experience.

In addition to the Legislative Councillor, the Chief Justice of Bengal, and one of the Puisne Judges of the Supreme Court selected by the Governor General, are also members; and six members, in addition to the Governor General, or the Vice-President or Chairman, are necessary to form a quorum, and one of the judges, or the fourth ordinary member, must be present.

A body so composed must, in my judgment, be preferable to the legislative body under the old system, though I cannot say that it is the best that could be devised. In my

opinion it would be greatly improved by the introduction of some non-official members; but this, perhaps, is rather going beyond the question.

The fourth ordinary member has now a right to sit and vote upon all subjects in the Executive Council; this, to a considerable extent, prevents him from devoting to legislation as much time as he otherwise would be able to do; but it enables him to become better acquainted with all that is going on, and to form a better judgment as to the policy or impolicy of passing a particular law.

Upon the whole, I consider this to be an advantage. Furthermore, under the present system, there is a clerk and clerk assistant to the Council; these offices are at present filled by gentlemen of great ability: the former by a barrister and an experienced draughtsman, well acquainted with the general principles of law and jurisprudence; the latter by a native gentleman intimately acquainted with the regulations of Government, with the various tenures of land, with the civil and criminal laws as administered in the mofussil, and with the regulations affecting the revenue and police.

The assistance which they are able to render cannot be over-rated, especially in the preparation of new laws, and in attending upon the select committees, when revising proposed laws, after they have been published for general information.

Another great advantage of the present over the former system is, the publicity of the discussions of the Council. These discussions are generally conducted in a calm, orderly, and business-like manner, and of course cannot be so attractive to the public as the discussions of a larger body, in which the warmth and earnestness of party are called into play. But still, I believe, it is a source of satisfaction to the public to know that any one can without difficulty obtain admittance upon the discussion of any public measure, and that reporters for the public press are always in attendance. Formerly, all discussions upon the subject of a proposed law were conducted in private, in the same manner as the deliberations upon executive matters. If a law were rejected after it had been published for general information, the public had no means of knowing the cause of its rejection; so, if a law were published for general information, and alterations or modifications were suggested which were not embodied in the law when passed, the public had no means of ascertaining whether the suggestions had been duly considered, whether due weight had been given to them, or whether they had been rejected without sufficient reason.

Under the present system the case is different. The suggestions are duly considered and weighed by the select committees to whom the Bill is referred, and in all cases of importance are specially noticed in the reports. These reports are printed and published, and are publicly sold. This I consider is also a great advantage which the present system has over that which formerly existed.

3 November 1859. (signed) *B. Peacock.*

Fixed Establishment and other Charges of the Legislative Council.

	Rs.	*a.*	*p.*
Clerk of the Council	2,500	–	–
Assistant clerk	1,250	–	–
Register	300	–	–
Clerical establishment, including reporter	790	–	–
Servants	233	–	–
Average printing charges from January to September 1859	1,395	–	–
Average contingent charges	596	–	–
Add, for house-rent	600	–	–
Total – – – *Rs.*	7,664	–	–
Add, salaries of four paid members – 4,166/10/8 × 4 =	16,666	10	8
TOTAL, per mensem – – – *Rs.*	24,330	10	8
Or, per annum – – – *Rs.*	2,91,968	–	–

MEMORANDUM by the Secretary of the Government of Bengal.

I CANNOT ascertain that the Governor General exercised any direct authority over the Governor in Council at Madras and Bombay in the matter of making laws.

By the 13th of Geo. 3, c. 63 (1773), the Governor General in Council was invested with power to superintend and control the government and management of the Presidencies of Madras and Bombay in political matters; and by the same law it was enjoined on those Governments to transmit to the Governor General in Council intelligence of all transactions

transactions relating to the government, the revenues, and the interests of the East India Company.

By the 33d of Geo. 3, c. 52 (1793), the supremacy of the Governor General in Council was more clearly expressed; he was vested with full power and authority to superintend, control, and direct the Governments of Madras and Bombay in all points, among others, being specified "the collection and application of the revenues;" and those Governments were declared bound to obey all orders and directions of the Governor General in Council in all cases whatsoever.

A certain power of legislation, "for the good order and civil Government of the settlement," had been given to the Governor General in Council, as regards the settlement of Fort William and its dependencies, by the law of 1773, and this power does not seem to have been extended to Madras and Bombay by Act of Parliament until 1807 (47 Geo. 3, Sess. 2, c. 68), though the power of making laws was practically exercised by those Governments before that date.

Laws passed in all the presidencies under these Acts were liable to be repealed by the King's Government, and they required also to be registered in the Supreme Court of the Presidency.

As regards taxation, the East India Company succeeded, I apprehend, to the revenue system and the revenues of their predecessors; but their power to impose new taxes does not appear to have been clearly defined until the 53d of Geo. 3, c. 155, (1813), and the 54th Geo. 3, c. 105. By the first of these Acts it was declared that no new imposition of any duty or tax on the import, export, or transit of goods made by the Government of any presidency should be valid, until the same should be sanctioned by the Home Government; but a full authority was given to the several Governments, with such sanction, to levy duties of customs and other taxes upon all persons whomsoever, and upon all goods, merchandise, &c., whatsoever. The latter Act was passed with reference to certain doubts which had arisen, and by it all duties and taxes previously imposed by the orders of any of the Governments, and all regulations for imposing and levying the same, were confirmed and made valid, as if they had been imposed under the provisions of 53 Geo. 3, c. 155.

A copy of every regulation passed at Madras and Bombay was sent to the Governor General in Council, but it does not appear that they were submitted for approval before being passed. It seems probable, however, that the legislative body being one and the same with the Executive Government of the Presidency, may have been practically under the control of the Supreme Government, in much the same degree that the central legislative body constituted at Calcutta by the Act 3 & 4 Will. 4, c. 85, was always under the control of the Home Government (irrespective of the express power given to that Government by law to disallow Acts), until the question of its independence was raised, after it was enlarged and re-modelled under the Act of 1853.

(signed) *W. Grey.*

Camp Jubbulpore, 15 January 1861.

Sir, No. 2 A, Home Department.

On the 9th of December 1859, I had the honour to lay before you my opinion of the present mode of conducting the Legislation of India. During the past year, events have occurred, and experience has been had, which make me desire to recur to the subject, and to state how far I see reason to modify that opinion.

The events referred to are, chiefly, the passing of the Income Tax Act and the Arms Act through the Legislative Council, and the discussions on these measures; the differences which arose between the Supreme Government and the Government of Madras on the first of them; the doubts which have been raised as to the validity of laws introduced into Non-Regulation Provinces without enactment by the Legislative Council; and the address of the Legislative Council for the communication to it of certain correspondence between the Secretary of State and the Supreme Government of India.

2. The discussions on the Income Tax Bill, and the differences with the Government of Madras, have strengthened my conviction that a Legislative Council should be given to each Presidency, and that the Supreme Government should have power to create and sanction Legislative Councils in all Governments administered by Lieutenant Governors and Chief Commissioners.

3. The same discussions have set forth both the advantages and the disadvantages of publicity of debate; by which I mean, not only the printing of the proceedings of the Council for public information, but the debating in House of Commons forming an open chamber.

As regards the English community, the free publicity given to all that passed in the framing of a large measure of direct taxation which was to affect that

community has been satisfactory to them and advantageous to the Government. As regards the natives of India, my conclusion is different. I believe that, with few exceptions in and about Calcutta, they value publicity of debate very little; and I know that errors as to the intentions of Government, founded upon incorrect reports of speeches in the Legislative Council, have influenced the minds of the people to a serious and even dangerous degree, in places distant from the seat of Government, and therefore out of the way of prompt correction.

But I am of opinion that it will be much better that open debate in the Legislative Councils of the three Presidencies should be the rule, than that dissatisfaction should be caused to any class by any departure from it, now that it has been established in Calcutta, at the same time each Presidency should take its own measures to secure the proceedings of its Council against being reported incorrectly.

4. I am of opinion that it will be better that no Judges, whether of the Supreme or of the Sudder Courts, should have seats in the Legislative Councils. The rule observed in England, which excludes Judges from the House of Commons, should be followed.

I would fill the places of the Chief Justice and of the Sudder Judge, who would thus be excluded from the Councils, as formerly proposed by me with two civil officers, covenanted or uncovenanted, chosen by the Governors; but as this would give a greater preponderance to the officers of the Indian Government than is desirable, I recommend that the number of members not holding office be increased from three to five, to be chosen from amongst Europeans or Natives, as the Governor may think proper.

5. Beyond this, I have no alteration to propose in the constitution of the Legislative Councils of Madras and Bombay, as described in paragraph 25 of my former Despatch.

6. But I would not, as there proposed, make the Council sitting in Calcutta a Council for Bengal and also a Council of the Governor General. I think that Bengal and the North-Western Provinces, and the Punjab, should each have its own Legislative Council.

These three Governments are carried on by Lieutenant Governors without Executive Councils, and I am opposed to giving Executive Councils to them. I do not think that there would be any gain in it which would make up for the tardiness of action which is the tendency of administration by Councils or Boards; and although, if measured by area, population, and revenue, Bengal has stronger claim to a Council than either Madras or Bombay, it has not got an army or a separate Civil Service to itself, and its interests and traditions are not so distinct from those around it as are those of the two other Presidencies.

But the absence of an Executive Council, a Commander in Chief, and an Advocate General in each of these three Governments, will render the number of *ex officio* Members of their Legislative Councils small, and I think that their respective requirements will be best met by enacting that each Lieutenant Governor may appoint to his Legislative Council any number of members, not exceeding 12, of whom one-third should be persons not holding office under Government. The appointments should be approved by the Governor General in Council, who would require that Law and Revenue should be efficiently represented in each Council.

7. If, as above recommended, the Legislative Council of Bengal be a body distinct from the Legislative Council of the Governor General, a change in the constitution of this last-named body also becomes necessary.

The Governor General, the four Members of his Executive Council, the Commander in Chief, the Accountant General, and the Advocate General, should be members of it. To these I would add the Lieutenant Governor or other head of the Province in which the Council may at the time be sitting, and any other heads of Local Governments (such as the Chief Commissioner of Oude, the Commissioner of Nagpore), who might be within reach. All such high officers should be *ex officio* Members of the Council. I would further add such nominated members, European or native, as the Governor General may, from time to time, appoint; the number of these must not exceed 12, and one half of the number to be persons not holding office under the Government.

8. Two

8. Two things are essential in framing a body of advisers to the Governor General in legislative matters. One, that it should be capable of being assembled for business in other places than Calcutta; and the other, that it should so conduct its business as that the opinions and votes of natives not skilled in the English language can be taken.

9. To secure the first object, the appointment of members who are not members *ex officio*, should be for a short term; certainly not longer than two years, and, I think that a single year would be better. This would enable the Governor General to bring together an efficient body wherever in the plains of India he might be,—Benares, Allahabad, Agra, or even Lahore; and it would make eligible non-official persons, whether English or natives, much more disposed to lend their services than they will be if they are to be bound by duties of a longer duration.

10. The second object can be attained only by adopting for this Council forms of debate different from those which have been adopted in the present Legislative Council.

If discussion by speeches, and according to the rules of the House of Commons, be adopted, it will be hopeless to look for the co-operation of native gentlemen who cannot speak or understand a word of English, and who would have nothing to do in the Council but to sit and listen to what they could not comprehend.

In the Local Legislative Councils at Calcutta, Madras, and Bombay, with their comparatively large European communities, it is, as I have already said, advisable that these forms should continue to be followed. But at a distance from the Presidency towns, and in the Legislative Council of the Governor General, they should be avoided.

The North Western Provinces constitute a Government equal to the kingdom of Prussia in extent, and exceeding it by several millions in population. The Punjab is three times as large as Scotland, and its inhabitants are five times as numerous. But I doubt whether in the North Western Provinces there are half-a-dozen English gentlemen not connected with the Government, and who, by education, property, and their command of time, would be enabled to take any part in legislation. In the Punjab, I believe that there are none such. Under both Governments, however, there are intelligent, wealthy, and influential native gentlemen, many of them attached to our rule and having a large stake in its stability and power, although ignorant of our language and not familiar with our ways. Their participation with us in the making of laws for their Provinces would be a help to us, and acceptable to their own class and to the classes below them. To secure this we may be content to forego something of those formalities which would preclude all natives who cannot talk English fluently and who are not accustomed to our modes of business, from taking a useful part in legislation.

For example—if there were occasion to assemble the Governor General's Legislative Council anywhere in the Upper Provinces, and if important measures, such as the Income Tax Bill, the Arms Bill, or the License Bill, were under consideration, there are no advisers whom I should more desire to take into Council than the Maharajah of Putteealla and the late Minister of Gwalior, Dinkur Rao;* and this not merely to obtain an expression of their opinions, which we can obtain already, but so as to make them a part of the legislating body, and to give them a sense of responsibility and a share of real power.

I could name many others whose nomination to the Legislative Council of the Governor General would, upon occasion, be very beneficial; and the number of those whose presence in the Local Legislative Council of the North Western Provinces or of the Punjab would be useful, is still greater.

But the presence of these gentlemen in a room in which debates should be conducted

* The Maharajah of Putteealla, though a Sovereign Chief in his own State, holds lands under the British Government, and Dewan Dinkur Rao is also possessed of property in British territory. Their views upon some of our recent measures have been very shrewd and just. The open participation of such men in making laws for India is scaacely second in importance to the co-operation of the native gentry with us in administering the law.

conducted according to the forms of the present Legislative Council would be worse than useless, even if they consented to it, for it would make a mockery of a responsibility, which, if we are wise, we shall lose no time in establishing as real.

For these reasons, I recommend that in the Legislative Councils of the North Western Provinces and the Punjab, as well as in that of the Governor General, the business should be conducted as in a Committee, or Commission, and not in the form of set Parliamentary debate, and that the reports of the proceedings be made under the authority of the Government.

11. In respect to the functions to be given to the several legislative bodies, I retain the opinions expressed in my former Despatch. I think that it would be found quite practicable to divide measures of legislation in India into two classes: those of general administration, and those of local administration.

12. In regard to the latter, which would be those of most frequent occurrence, the rule would be, that if the revenue of the Local Government were to be directly affected by the Bill, the sanction of the Governor General in Council should be first obtained to its introduction, and that after this had been received, and the Bill had been passed by the Local Legislative Council, it should be sent up to be accepted, or rejected (in the latter case with reasons assigned), by the Governor General's Legislative Council. This precaution of a preliminary sanction is absolutely indispensable, if the public credit and financial responsibility of British India as a whole are to remain intact; and I do not know how the liabilities of the Empire can be broken up and distributed between several Local Governments, without breach of faith to the national creditor.

Measures of local administration not affecting the revenue would need no sanction from the Governor General in Council previously to being brought before a Local Legislative Council; and as to the liberty of introducing measures of any kind, there would, of course, be no distinction between official and non-official members; but, in all cases, a member should first obtain leave from his own Legislative Council to bring in his Bill.

13. As regards the other class of measures—those of general administration—I have, in my former Despatch, * mentioned such as would come under this head. If it should not be deemed advisable to enumerate them in detail in the Act of Parliament which shall constitute, or which shall give power to the Governor General in Council to constitute the new Councils, it would suffice to authorise the Governor General in Council to prescribe, subject to the approval of Her Majesty's Secretary of State, the classes of measures which, as affecting British India generally, shall be initiated only in the Legislative Council of the Governor General. But, in some way or other, I think it important that Parliament itself should recognise a distinction between measures which are, and measures which are not, to be initiated by local legislatures.

The list which I gave, though apparently long, would, in fact, leave the great majority of measures of interest in the hands of the local legislatures. At the present time, it is probable that the measures of the greatest importance and interest which could be introduced into the Legislative Council would be a Police Bill; a Bill regulating anew the functions and jurisdiction of native judges and magistrates; a Bill for extending the registration of deeds and contracts; a Bill for enforcing contracts for agricultural produce. I pronounce, here, no opinion whether such measures are necessary; but probably every one of them, except the Police Bill, in which financial considerations might be largely involved, would, under the system which I have proposed, be treated *ab initio* in the Legislative Council of Bengal, or of any other Province which required the measure, and would come up to the Legislative Council of the Governor General only to be accepted and registered as law, or to be rejected with explanation of the reasons for rejection.

14. Of measures at this moment before the Legislative Council, and which would come under the other head, and would, therefore, have to be initiated and made law in the Legislative Council of the Governor General, I can call to mind

* See Despatch of 9th December 1859 (929).

mind only two—the Paper Currency Bill and the License Tax Bill. The mode in which such measures would be dealt with would be, by sending to each Local Legislative Council, for its consideration, the draft or skeleton of a Bill framed under the authority of the Legislative Council of the Governor General. Each Local Legislative Council would go into an examination of the Bill, very much as if it were a Bill of its own in Committee, and would report upon it to the Legislative Council of the Governor General. And, upon the receipt of all the reports, the general measure would be framed and made law by that Council.

15. The making of laws for those provinces which would have no legislative councils (that is, for non-regulation provinces) should be vested in the Legislative Council of the Governor General.

16. I will not go again into the question of cost. It is comparatively unimportant. The scheme, as I have now enlarged it, will be somewhat more expensive than that which I proposed in 1859; but the five Local Councils and the Governor General's Legislative Council will not, together, cost so much as the present Council.

17. I have referred, at the beginning of this Despatch, to the recent address of the Legislative Council to the Government of India, for the communication of certain correspondence between the Secretary of State and the Government, and also to the doubts raised in the Legislative Council as to the validity of laws introduced into the non-regulation provinces without enactment by the Council.

I hope that Her Majesty's Government will see, in these two incidents, reason for hastening to determine what the future machinery of Legislation in India, and its functions, shall be. Matters cannot long remain as they are without producing great inconvenience, and perhaps exciting heats which it will be difficult to allay, and which will injure and discredit us as a governing power.

It is now of little consequence whether, in giving effect to the Act of 1853, the Government of India did, or did not, overstep the intentions of its framers, and of Parliament, as regards the functions of the Legislative Council, or whether the view which the Governor General in Council has lately taken of the claims of the Legislative Council is constitutionally correct or not. The important object is, that an end should be put to all doubts, and that this should be done speedily.

I have, &c.
(signed) *Canning.*

Camp Sleemanabad, 26 January 1861.

Sir, No. 3 A., Home Department.

In my Despatch of the 15th instant, I considered the question of a change in the Legislative Council of India. I now proceed to offer my recommendations in regard to a change in the Executive Council of the Governor General.

2. The fault of the present constitution of that Council is the waste of labour and the delays that it entails. This has been mitigated of late, but not so much as it might be. It has arisen chiefly from the fact that the wording of the law and long usage appear to prescribe, that every act of the Governor General in Council, beyond those of mere routine (and not always excepting these), must be done with the actual consideration and concurrence of all the Members of the Council. This tradition was not long ago broken through, but not without misgivings on the part of some Members of the Government, as to whether they were not unduly divesting themselves of a responsibility fixed upon them. A division of departments has, however, to some extent taken place, and the result has been good.

3. I would recognize this division by law, and I would carry it out more distinctly.

4. For this purpose the law should declare that it shall be in the power of the Governor General to charge each Member of the Council with the direction of such department of the Government as he may think fit: and that, subject

to any regulations which the Governor General in Council may lay down, the orders of that Member of the Council should in that department be held to be the orders of the Governor General in Council.

5. It is not possible or desirable to define by law what questions should be submitted to the whole Council. Subjects constantly arise upon which it is quite right that a Member of Council should consult the Governor General, but which it would be a waste of time to bring before every Member of the Council. The practice should be regulated as in the English Cabinet, by good understanding and common sense, and by the paramount authority of the head of the Government. There is no fear that any important questions would be kept from the consideration of the whole Council by such a change.

6. The change would certainly not diminish the dignity and weight which should attach to a seat in the Governor General's Council.

7. No alteration would be necessary in the arrangements which are now made when the Governor General leaves Calcutta. One of the Council would become President, as now, but it would be more easy and more fitting than it is at present that the Governor General should take with him from time to time one or other Member of his Council, according to the objects of his tour, or the provinces he might be going to visit; and so long as care were taken not to weaken the President in Council too much for the discharge of the business left to be carried on in Calcutta, there would be great advantage in his doing so.

And this not to the Governor General alone; for it is most desirable that the Members of his Council, as well as himself, should see something more of India than Calcutta and those provinces only in which their early service may have been passed.

8. In respect to the appointment of the Members of the Governor General's Council, I have nothing to suggest, except that the old practice of selecting its Civilian Members from the Bengal service alone, should not be reverted to. You cannot concentrate in a body of two or three Members a general experience of all parts of India, but I know that no amount of individual ability and efficiency will compensate the disadvantage of a restricted field of choice.

I am sure that my Colleagues of 1856, 1857, and 1858 were as sensible as I was of the disadvantage under which we then laboured, from no one of us having practical knowledge of any Non-regulation Government whatever, or of any Regulation Government except that of Bengal.

9. I think it desirable that the Council of the Governor General should contain a member of the English bar. I should prefer one who had no other duties to one who was also Advocate General, though this would be no reason for not placing the Advocate General in the Supreme Legislative Council, as I have before proposed.

The difficulty of finding fit occupants for high legal offices in India is very great, and the salary will be an addition to the present cost of the Council. But I recommend that Her Majesty's Government take power from Parliament to appoint to the Governor General's Council two Members (instead of one), who shall not be Members of the Indian Civil Service, and one of whom shall be a barrister.

10. I am of opinion that with the new and distinct departmental responsibility which, if the foregoing proposals are adopted, will be fixed upon individual Members of the Council, the salaries of some of the secretaryships will admit of reduction. Those which now stand at 5,000 *l.* each might reasonably be reduced to 4,000 *l.*

I have, &c.
(signed) *Canning.*

EAST INDIA (COUNCILS).

COPY of the DESPATCHES from the Governor General of *India* to the Secretary of State for *India*, dated 9 December 1859, 15 January 1861, and 26 January 1861, respecting the CONSTITUTION of COUNCILS in India.

(*Sir Charles Wood.*)

Ordered, by The House of Commons, *to be Printed*,
5 *June* 1861.

EAST INDIA (COUNCIL).

RETURN to an Address of the Honourable The House of Commons, dated 15 February 1872; —*for*,

"COPY of LETTER addressed by the Under Secretary of State for India to the Chambers of Commerce on the 25th day of January 1872, with reference to recent Appointments of MEMBERS to the COUNCIL of INDIA."

India Office,
20 February 1872.

H. L. ANDERSON,
Secretary, Revenue, Judicial, and Public Department.

India Office, Westminster, S. W.,
25 January 1872.

Sir,

WITH reference to the Memorial which you have lately forwarded from the Chamber of Commerce of to the Secretary of State for India on the composition of the Indian Council, I am directed by the Duke of Argyll to communicate to you the views of Her Majesty's Government on the subject to which that Memorial refers.

The ordinary work, both of Indian administration and of Indian legislation, is conducted in India, and not at home. For this purpose the Viceory has an Executive and also a Legislative Council. The members of the Executive Council are entrusted with administrative departments, and have important executive duties to perform. The Legislative Council, though not in any sense a representative body, yet includes members who are connected with particular classes or with special interests. Thus there are Native members belonging to various parts of India, and thus, at this moment, the Chairman of the Calcutta Chamber of Commerce is a member of the Legislative Council.

The position of the Council of the Secretary of State for India is altogether different. It has no legislative authority. It has no administrative functions. It cannot even direct, although it may check, expenditure. It is a consultative body, constituted for the purpose of advising the Secretary of State in the exercise of those powers of review and of control which are the chief functions of the Government at home.

How far home interests, as distinguished from the interests of the people of India, can legitimately influence decisions on the conduct of Indian administration is a very grave political question, which it is the special duty of the Secretary of State to consider and determine on his own responsibility and on the responsibility of the Government of which he is a member.

The most valuable element in his Council must always be men who have had Indian experience, and who know the very various and the very peculiar populations whom Indian legislation must affect. Accordingly, Parliament has provided that a large majority of the Council must have the special qualification of knowledge of India and of administrative experience in that country.

In the old Court of Directors, however, there were generally a certain number of members who had not passed through an Indian career, but who, in one way

or another, were concerned with the finances, or otherwise with the home affairs of the East India Company. In this manner, together with the origin and traditions of the Company, a certain indefinite but felt connection was kept up between the Government of India and the commercial classes at home.

The great difference of position between the old Court of Directors and the present Council,—the abolition of valuable patronage,—even the removal of the India House from Leadenhall Street to Westminster,—above all, the complete transfer of the initiative to the Secretary of State, and the comparatively inconspicuous duties which thus are left,—are circumstances which have all contributed gradually to eliminate members who have not belonged to the Indian Services, and who have not that personal interest in, and that strong attachment to, India for its own sake, which have ever distinguished in a marked degree the servants of the Indian Government.

It was natural that, under these circumstances, the composition of the Indian Council should attract attention, and the subject was brought before the House of Commons in the Session of 1870 by Mr. Graves.

On that occasion Mr. Gladstone stated, on behalf of the Government, the strongest objections to the particular terms of Mr. Graves's motion; but he explained, at the same time, that the Government were desirous of again introducing some greater variety of elements into the Council, and to that end would be prepared to recommend to the Crown, as opportunity might arise, the appointment of some members who had not belonged to the Indian Services, but who, from general ability or from knowledge of affairs, might add to the weight and consideration of the body.

The Duke of Argyll, cordially concurring in the view then expressed by Mr. Gladstone, and desirous of giving it effect, on the occasion of a recent vacancy advised the appointment of an eminent man, who did not belong to the Indian Services, who would not have been eligible under the statutory qualifications which apply to them, but who combined great general attainments and a high reputation at home with fresh knowledge of the most difficult and urgent questions of legislation in India, and of the manner in which these must affect the interests and feelings of its people.

I am instructed to add, that another vacancy having occurred by the retirement of one of the most distinguished members of the Council, whose interest in India is unabated, and whose knowledge of it has been maintained by the continuous devotion of nearly 40 years in Parliament, in the direction, and in Council, the Duke of Argyll has had much pleasure in advising the Crown to appoint Sir Louis Mallet, whose long and able services at the Board of Trade, and whose intimate acquaintance with commercial questions, are well known to the commercial classes of this country.

I have, &c.
(signed) *M. E. Grant Duff.*

EAST INDIA (COUNCIL,

COPY of LETTER addressed by the Under Secretary of State for India to the Chambers of Commerce on 25th January 1872, with reference to recent Appointments of MEMBERS to the COUNCIL of INDIA.

(*Mr. Graves.*)

Ordered, by The House of Commons, *to be Printed,*
21 *February* 1872.

Under 1 *oz.*

SUPREME COURT OF CALCUTTA.

RETURN to an Order of the Honourable The House of Commons, dated 23 March 1854;—*for*,

ACCOUNTS, "in a Tabular Form, of the various ESTATES to which the REGISTRARS of the SUPREME COURT of CALCUTTA have Administered, of which the Whole or any Part remains Unclaimed; Name of Deceased Party; Date of Demise, and where; Occupation or Pursuit; Total Amount, how disposed of, Amount of Interest received each Year, and how disposed of, and Total Balance remaining, and how invested:"

"Of all ESTATES Administered to by the REGISTRAR of the SUPREME COURT of CALCUTTA, from the 25th day of February 1848 to the latest Date; Name and Occupation of Deceased Party; Amount received, to whom paid, remaining Balance, how invested, Interest how disposed of, Balance of Interest on each Estate in the hands of the Registrar, if Claimed, and whether under Litigation:"

"Similar ACCOUNT of all MONIES belonging to Parties to whom the Registrar has Administered, and in the Hands of the Accountant-General, showing how the same is invested, the Interest received, and how disposed of:"

"And, ACCOUNT of the AMOUNTS paid, and to whom, out of the Unclaimed Estates, in conformity with the Recommendation of the Committee on Sir *Thomas Turton*'s DEFALCATIONS."

East India House,
14 March 1855.

JAMES C. MELVILL.

(*Mr. Roebuck.*)

Ordered, by The House of Commons, *to be Printed,*
17 *May* 1855.

SUPREME COURT OF CALCUTTA.

— No. 1. —

SCHEDULE of ESTATES to which the REGISTRARS of the SUPREME COURT OF CALCUTTA have Administered, of which the whole or any part remains Unclaimed.

NAME OF DECEASED PARTY.	Date and Place of Demise.		OCCUPATION or PURSUIT.	TOTAL AMOUNT.			HOW DISPOSED OF.	Amount of Interest.	How Disposed of.	Balance remaining, and how Disposed of.		
	Date.	Place.		In Cash.	In Securities.					In Cash.	In Securities.	
				Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*				*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*
Agnew, Major W.	In 1843			770 5 –	–	–	Part invested, and part paid in testamentary expenses.	142 14 8	Added to the principal.	158 1 2	–	700
Apperly, Lieut. Herbert	24 Sept. 1839		6th Regiment, N. I.	1,781 14 3	–	–	Part paid to creditors, part invested, and part paid for testamentary expenses.	922 12 2	ditto	373 2 7	–	1,400
Baker, W.	7 May 1842		Indigo Planter	1,580 3 –	–	–	ditto ditto	719 12 9	ditto	318 5 11	–	1,300
Barwell, Richard	Dec. 1842	Great Britain		1,891 14 3	–	–	Part paid law charges, part invested, and part paid for testamentary expenses.	704 – –	ditto	338 15 2	1,500	—
Beebee, Auksafere	10 Sept. 1841	Dacca		2,029 13 8	–	–	Part invested, and part paid for testamentary expenses.	912 9 10	ditto	365 14 5	–	1,600
Beebee, Katte, *alias* Johanes Kattee.	27 Aug. 1839	Calcutta		2,805 – 9	–	–	Part paid for servants' wages, part invested, and part for testamentary expenses.	1,267 13 5	ditto	507 2 9	2,200	—
Beebee Kuthkey	12 Oct. 1838			3,427 12 6	–	–	Part invested, part paid legatee, part paid for law charges, and part for testamentary expenses.	653 2 11	ditto	12 10 5	–	500
Bernard, Charles	12 June 1851		Merchant	479 6 4	–	–	Part paid for testamentary expenses.	– – –	ditto	310 4 7	—	—
Birch, Lieut. C. J.	1 Aug. 1850	Moulmein	19th Madras, N. I.	312 10 1	–	–	ditto	– – –	ditto	278 8 9	—	—
Brown, Miss H. E.	11 Dec. 1838			– – –	5,000	–	Part invested, and part paid for testamentary expenses.	3,863 3 4	ditto	464 6 10	5,000	1,500
Burnett, Colonel J.	1 Oct. 1841		Knight Commander of the Bath	1,095 14 2	–	–	Part invested, part paid law charges, and part paid for testamentary expenses.	320 13 4	ditto	151 3 6	–	500
Burrell, William	3 Aug. 1841		Partner of Messrs. Burrell, Dening & Co.	5,072 4 4	–	–	Part invested, and part paid for testamentary expenses.	2,966 13 9	ditto	318 6 8	–	5,800
Caldwell, Major-gen. Sir A.	17 May 1853		Bengal Artillery	804 6 2	6,500	–	Part paid assessment and servants, and part for testamentary expenses.	296 7 11	ditto	416 11 8	–	7,100
Campbell, James	12 June 1851			5,522 4 6	–	–	Part invested, and part paid for testamentary expenses.	575 8 –	ditto	256 12 8	–	5,400
Chinneax, J. P.	12 June 1851		Indigo Planter	5,340 15 6	–	–	ditto ditto	273 10 2	ditto	117 1 2	–	5,100

Collins, Sergeant D.	21 Feb. 1842	Meerut	1st Brigade Horse Artillery.	2,400 – –	– – –	– – –	Part invested, and part paid to creditors.	1,171 10 8	– – ditto – –	557 1 11	– –	1,900
Connell, Quartermaster A.	18 Mar. 1845	– – –	In the military service of H. M.'s 1st Regt. of Foot, 2d Battalion.	1,299 11 6	– – –	– – –	– – ditto – – ditto –	306 – –	– – ditto – –	264 13 2	– –	900
De Mello, Mrs. A. M.	17 April 1852	Calcutta	– – – –	133 – 6	– – –	– – –	Part paid for servants' wages, part creditors, part for funeral, and part for testamentary expenses.	– – –	– – ditto – –	49 – 2	—	—
De Rozario, Mrs. Paulina	14 Aug. 1849	Calcutta	– – – –	1,689 4 8	– – –	– – –	Part invested, and part paid for testamentary expenses.	285 13 4	– – ditto – –	269 1 10	– –	1,400
De Perida, Ventura	22 Feb. 1842	– – –	– – – –	829 9 8	– – –	– – –	Part invested, part paid law charges, and part paid for testamentary expenses.	320 15 4	– – ditto – –	166 11 3	– –	500
Dickson, A. L.	29 Nov. 1841	Goruckpore	Merchant – –	3,333 7 10	– – –	– – –	Part invested, part paid to creditors, and part paid for testamentary expenses.	1,740 13 4	– – ditto – –	317 10 3	– –	3,200
Evans, Mary	17 Sept. 1841	– – –	– – – –	1,729 8 6	– – –	– – –	Part invested, and part paid for testamentary expenses.	759 11 5	– – ditto – –	317 15 10	– –	1,200
Fellum, John C.	3 May 1842	– – –	– – – –	1,867 12 4	– – –	– – –	Part invested, part paid for law charges, and part for testamentary expenses.	815 1 8	– – ditto – –	379 – 9	– –	1,400
Forbes, Ensign J. K.	7 Jan. 1840	– – –	10th Regt. N. I. –	753 – 3	– – –	– – –	Part invested, part paid to creditors, part paid for law charges, and part for testamentary expenses.	288 – –	– – ditto – –	94 1 3	500	—
Fraser, Major W.	1849	– – –	– – – –	770 4 11	– –	– – –	Part invested, and part paid for testamentary expenses.	145 14 11	– – ditto – –	155 5 6	– –	700
Hay, James	In 1840	– – –	– – – –	3,585 3 5	– –	– – –	– – ditto – – ditto –	1,868 7 5	– – ditto – –	382 8 8	2,500	1,100
Hemmings, Major W.	18 Oct. 1841	– – –	In the service of E. I. Company.	9,111 13 2	48,400	4,000	– – ditto – – ditto –	32,711 8 –	– – ditto – –	*Dr*738 14 6	47,400	34,600
Howannes, Mrs. M., *alias* Beebee Bailey.	28 Nov. 1848	Calcutta	– – – –	3,414 14 4	– –	9,100	Part invested, part paid for funeral, part for assessment and repairs of the house, and part paid for testamentary expenses.	2,115 6 8	– – ditto – –	202 9 8	– –	11,400
Humfray, Brigade Major, S. P. C.	8 July 1839	– – –	36th Regt. N. I. –	5,843 10 9	– –	– –	Part invested, part to creditors, and part paid for testamentary expenses.	941 15 2	– – ditto – –	411 1 9	700	700
Humphreys, Mrs. S.	18 Aug. 1849	Calcutta	– – – –	2,189 7 7	– –	– –	Part invested, part paid to servants and creditors, and part for funeral and testamentary expenses.	222 1 4	– – ditto – –	8 13 7	– –	1,100
Hurd, R.	14 Jan. 1843	Sylhet	– – – –	969 14 8	– –	– –	Part invested, and part paid for testamentary expenses.	313 11 –	– – ditto – –	204 11 4	– –	600
James, Mrs. Susan	1 Oct. 1844	Calcutta	– – – –	1,179 – –	– –	– –	Part paid to sons, and part invested, and part paid for testamentary expenses.	326 10 8	– – ditto – –	205 5 1	– –	700
Jansz, C. W.	5 April 1847	Calcutta	Steward – – –	– – –	1,000	– –	Part paid brother, and part for testamentary expenses.	154 1 6	– – ditto – –	151 3 –	– –	700

(*continued*)

No. 1.—SCHEDULE of ESTATES to which the Registrars of the Supreme Court of *Calcutta* have administered, of which the whole or any part remains Unclaimed—*continued.*

NAME OF DECEASED PARTY.	Date and Place of Demise.		OCCUPATION or PURSUIT.	TOTAL AMOUNT.			HOW DISPOSED OF.	Amount of Interest.	How Disposed of.	Balance remaining, and how Disposed of.		
	Date.	Place.		In Cash.	In Securities.					In Cash.	In Securities.	
				Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*				*Co.'sRs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*
Joymoney, Bustomee -	9 Sept. 1845	Calcutta -	- - - -	1,821 2 6	- -	- -	Part paid to creditors and assessment, part invested, and part for testamentary expenses.	366 11 3	Added to the principal.	260 8 11	- -	1,400
Keating, H. - - -	22 Oct. 1841	Dacca - -	- - - -	862 4 9	- -	- -	Part invested, and part paid for testamentary expenses.	320 15 4	- - ditto - -	166 11 1	- -	500
Lambton, Lieut.-Col. W. -	18 Jan. 1842	- - -	H. M.'s 33d Regt. of Foot.	998 3 8	- -	- -	- - ditto - - ditto -	370 - -	- - ditto - -	157 6 9	- -	600
Lynch, Mrs. Rose - -	14 Mar. 1840	Coolie Bazar -	- - - -	893 5 11	2,500	- -	Part paid for funeral, and part invested, and part paid for testamentary expenses.	660 6 8	- - ditto - -	175 1 8	2,500	500
Manson, Mrs. C. - -	16 Nov. 1846	Calcutta -	- - - -	51 8 6	- -	500	Part paid to creditors, and part for testamentary expenses.	130 - -	- - ditto - -	*Dr* 3 2 3	- -	500
Morgan, Dr. N. -	11 Sept. 1849	- - -	In the service of E. I. Company.	1,460 5 2	10,000	- -	Part paid for law charges, part invested, and part for testamentary expenses.	2,788 11 5	- - ditto - -	1,130 13 3	- -	13,200
Montazooma, Dowlah Mehdy Ally Khawn.	14 Sept. 1845	- - -	Moorshedabad Noowabs Seiabia.	7,956 7 9	- -	- -	Part paid for law charges, part invested, and part for testamentary expenses.	1,560 13 4	- - ditto - -	520 - 9	- -	7,500
Muckun, Doss - - -	3 April 1845	Calcutta -	Hindoo Byragge -	2,809 14 -	- -	- -	- - - ditto - - ditto, and part for law charges, and part for testamentary expenses.	350 3 6	- - ditto - -	*Dr* 33 6 7	- -	500
Regelly, Vincent - -	27 June 1849	Calcutta -	- - - -	3,203 9 -	- -	- -	Part paid assessment, part funeral and servants, part for creditors, and part for testamentary expenses.	- - -	- - ditto - -	274 5 1	—	—
Sahib, Ally Khan - -	20 Feb. 1848	Calcutta -	Mooktaer to the Rajah of Gwalior.	5,555 - 6	- -	- -	Part invested, part for law charges, and part for testamentary expenses.	1,020 13 4	- - ditto - -	974 3 1	- -	5,000
Valle, B. - - - -	9 Jan. 1837	Calcutta -	Section writer - -	2,065 14 8	1,300	1,200	Part paid creditors and funeral expenses, part invested, and part paid for testamentary expenses.	2,631 10 -	- - ditto - -	510 5 10	2,000	2,200
Wellard, J. D. - - -	1 May 1849	Arracan -	Chief Officer, Barque Sea Gull.	172 1 -	- -	- -	Part paid for testamentary expenses.	- - -	- - ditto - -	137 1 4	—	—

N. B.—Testamentary expenses include the administrator's commission, the costs of obtaining letters of administration, of auditing the accounts current, and publishing the half-yearly schedules, filing account in court, postages and other petty charges.

SCHEDULE of ESTATES Administered to by the REGISTRAR of the SUPREME COURT of CALCUTTA, from the 25th February 1848 to the 30th June 1854.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Adams, J. H.	Solicitor	48,308 12 6	—	—	Creditors and next of kin	6 4 9	—	—				
Aikman, Lieut. C. R.	41st N. I.	2,961 7 9	—	—	Administratrix	121 6 5	—	—				
Ahmut, Hadjee	Merchant of Bombay	25 9 3	—	—	Funeral and testamentary expenses.	—						
Alexander, James	Civil service	5,124 6 5	—	—	Creditors and widow	82 — 11	—	—				
„ G. H. M.	ditto	10,354 2 7	—	5,500	Creditors	— — —	3,800	71,000	—			
			83 Agra Bank shares. 20 N. W. Life Insurance shares.				Less, *Rs.* 2,272. 12. 11. due to the administrator.					
Allan, R. W.	Commercial clerk	15,031 10 3	8,100	12,400	ditto	— — —	1,900	4,200	—			
							Less, *Rs.* 500. 12. 10. due to the administrator.					
Alpe, Capt. Henry	41st N. I.	1,197 8 6	—	—	ditto	—						
Anderson, Andrew	Indigo planter	1,176 13 —	—	—	ditto	—						
„ Major John	44th Regt. N. I.	5,369 12 10	—	—	ditto	6 3 1	— —	500	—			
Anderton, Lieut. H. C.	74th N. I.	1,279 15 —	—	—	Paid testamentary expenses, &c.	— — —	— —	1,200	—			
							Less, *Rs.* 199. 6. due to the administrator.					
Apperley, Capt. H.	Horse Artillery	3,224 1 3	—	—	Creditors	— — —	— —	600	—			
							Less, *Rs.* 199. 0. 7. due to the administrator.					
Apperley, J.	Overseer	128 3 —	—	—	Towards testamentary expenses, &c.	109 3 1	—	—				
Arratoon, Thaddius	Trader	634 5 9	—	—	Representatives	—						
Asken, Mrs. Margaret	—	786 11 9	—	—	Creditors, law charges	191 5 10	—	—				
Assaram, Burmono	Merchant	10,436 2 7	—	5,000	Expenses of and repairs to houses, &c.	517 5 10	1,100	12,300	—			
Athanass, Mrs. Elizabeth	—	31,208 2 6	15,750	2,000	Trustees, claimants, and son's schooling, &c.; repairs to and expenses of houses, &c.	— — —	— —	14,100	Payable to the son for his monthly allowance.	—		
							Less, *Rs.* 27. 7. due to the administrator.					
„ Manuel	—	6,539 8 3	15,700	—	Creditors	497 14 10	800	20,500	—			
Austen, Capt. G. P.	18th Regt. N. I.	No assets	—	—	—	— — —	*Rs.* 82. 0. 3. due to the administrator.		—			
Bacon, Overseer, Sergt. Thos.	Hon. Com.'s service	570 9 10	—	—	Creditors	34 14 11	—	—				
Baddeley, Lieut. C.	47th Regt. N. I.	2,465 0 3	—	—	Creditors, widow	1,389 15 5	—	—				

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued.*

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Baddiley, James	Keeper of the House of Correction.	8,275 8 11	1,000	11,500	Legatees, widow	—	—	8,700 Less *Rs.* 137. 6. 1. due to the administrator.	Payable to the widow.	—		
Bailie, Mrs. Rosina	—	281 6 —	—	—	Funeral and testamentary expenses, &c.	—						
Bailey, Francis	Broker	18,903 11 9	—	—	Creditors	226 15 2	—	1,100	—			
Ballands, Capt. A.	Mariner	254 2 3	—	—	ditto	48 3 1	—	—				
Ballard, W. J.	Cook	806 6 6	—	—	Funeral and testamentary expenses, &c.	477 8 10	—	—				
Barker, Sergeant-major J.	24th Regt. N. I.	752 6 1	—	—	Representatives	—						
Baring, Lieut. Henry	4th, N. I.	130 2 6	—	—	Creditors	—						
Bartlett, Lieut. J. A.	53d, N. I.	1,733 2 9	—	—	ditto	218 8 5	—	—				
Barrow, George	—	106 4 3	—	—	ditto	—						
Barclay, John O.	Quartermaster of P. & O. stmr. "Oriental."	66 15 6	—	—	Next of kin	—						
Barry, James	Actor	359 — —	—	2,500	Creditors, widow	2,367 9 7	—	—				
Basse, Dr. Chas. F.	2d European Regt.	735 1 2	—	—	Creditors	245 5 8	—	—				
Bathurst, John	Solicitor	1,698 13 5	—	—	ditto	594 9 7	—	—				
Beadon, H.	—	109 15 9	—	—	Executors	3 — —	—	—				
Beavan, Robert	Brewer	1,912 12 —	—	—	Creditors	219 4 10	600	500	—			
Beauchamp, Robert	Shipwright	20,073 14 5	—	—	Representatives	—						
Becher, Mrs. Elizabeth	—	6,150 3 6	2,000	4,500	Creditors	—	—	8,900 Less *Rs.* 6. 0. 3. due to the administrator.	—			
Becke, Miss Emma, of Patna	—	560 11 3	—	—	Towards testamentary expenses, &c.	467 1 10	—	—				
Bell, Rev. John	Missionary	1,662 1 10	—	—	Creditors, brother	—						
„ Charles R.	Customs inspector	338 8 —	—	—	ditto	—						
„ Conductor George	Ordnance Commissariat Department.	1,002 13 —	—	—	Funeral and testamentary expenses, &c.	72 4 3	—	700	—			
Bennett, Lieut. J. W.	14th Dragoons	1,776 13 4	—	—	Creditors, father	—						
„ Sergeant J.	H. C. service	2,300 — —	—	—	Creditors, and widow	157 — 3	—	600	—			
„ Francis	Indigo planter	68 15 3	—	—	ditto	—						
Bennet, Lieut. James P.	41st Regt. N. I.	1,971 5 7	—	—	Creditors	17 13 4	—	500	—			
Benson, Major W.	4th Regt. Lt. Cav.	4,848 10 3	—	—	ditto	251 — 5	—	700	—			
„ J. W.	Of Moulmein	93 3 —	—	—	Towards testamentary expenses, &c.	88 9 8	—	—				
Bentley, Mrs. Anne	—	8,890 13 6	76,800	14,000	Creditors and legatees	—	2,700	4,200 Less *Rs.* 65. 14. 11. due to the administrator.	—			
„ Legacy to A. E. Bagley.	—	1,125 15 5	—	5,000	—	91 — 5	—	5,000	Payable to Legatee.	—		
„ Anne Broadhead	—	900 12 5	—	4,000	—	172 7 1	—	4,000	ditto.	—		
„ Jane A. Davidson	—	1,125 15 5	—	5,000	—	91 — 5	—	5,000	ditto.	—		
„ Eliza E. Emmer	—	5,746 15 11	31,100	—	—	—	—	34,000 Less *Rs.* 933. 14. 7. due to the administrator.	ditto.	—		

„ J. T. Emmer (life interest).	- - - -	7,499 11 3	40,000	- -	Legatee - - -	488 9 6	700	47,200	- - - -	- - -	- - -	Suits pending.	
„ Robert A. - -	- - - -	10,348 - 10	- -	5,500	- ditto - - -	2,561 - -	—	—					
„ Legacy to the Apprenticing Society.	- - - -	2,553 - 1	- -	- -	- - - - -	2,553 - 1	—	—					
Beresford, Lieut. Richard -	62d Regt. N. I. -	1,248 14 1	- -	- -	Creditors - - -	—							
Bernard, Charles - - -	Merchant - -	479 6 4	- -	- -	Funeral and testamentary expenses, &c.	310 4 7	- -	- -	- - - -	- - -	Unclaimed.	—	
Birch, Lieut. C. J. - -	19th M. N. I. - -	312 10 1	- -	- -	- - ditto - - -	278 8 9	- -	- -	- - - -	- - -	ditto.	—	
Bignell, Capt. W. E. P. -	69th N. I. - -	2,090 15 2	- -	- -	Creditors - - -	221 5 10	—	—					
Black, Ensign John R. C. -	57th Regt. N. I. -	1,301 9 8	- -	- -	Towards testamentary expenses, &c.	- - -	- -	1,200	—				
							Less *Rs.* 41. 4. 10. due to the administrator.						
Blaney, A. B. - - -	- - - -	1,929 11 11	- -	- -	Creditors - - -	1,190 12 9	—	—					
Bluett, Capt. J. - - -	Mariner - - -	74 6 9	- -	- -	- ditto - - -	5 12 4	—	—					
Bloomfield, Lieut. C. R. -	56th N. I. - -	723 7 5	- -	- -	- ditto - - -	65 6 2	—	—					
Boileau, Major H. C. - -	28th N. I. - -	10,577 11 11	- -	- -	- ditto - - -	6,177 14 10	—	—					
„ Ensign L. A. - -	67th N. I. - -	1,311 13 5	- -	- -	Towards testamentary expenses, &c.	- - -	- -	1,300	—				
							Less *Rs.* 197. 13. due to the administrator.						
Boass, Andrew - - -	Of Lahore - -	22,497 1 4	- -	- -	Creditors - - -	—							
Bond, F. E. - - - -	- - - -	199 12 -	- -	- -	- ditto - - -	17 9 1	—	—					
Bourchier, Lieut. P. - -	50th N. I. - -	1,240 12 4	- -	- -	- ditto - - -	213 13 5	- -	700	—				
Boulnois, Lieut. A. - -	71st N. I. - -	3,314 10 5	- -	- -	- ditto, and next of kin	146 8 9	—	—					
Bowie, Mrs. Mary - -	- - - -	7,945 14 3	5,600 Two Bank of Bengal shares.	9,300	Legatees - - -	154 6 3	2,000	16,800	—				
„ Legacy to Mrs. Sarah Hughes.	- - - -	1,186 4 6	- -	- -	- - - - -	121 13 8	- -	1,100	—				
Box, Capt. Thomas - -	1st B. Fusileers -	7,916 7 7	- -	- -	Creditors - - -	75 8 2	- -	500	—				
Boyle, Edmund - - -	Merchant - -	11 8 6	- -	- -	Towards testamentary expenses, &c.	—							
„ Thomas - - -	Quartermaster, H. C. steamer "Tenasserim."	7 4 9	- -	- -	- - ditto.	—							
Bowen, Fife-major S. - -	56th N. I. - -	377 - -	- -	2,800	Legatees - - -	—							
Bradshawe, Mrs. C. M. -	- - - -	2,006 10 4	37,625	- -	- ditto - - -	—							
Brewitt, William - - -	Engineer - -	1,785 - -	- -	- -	Creditors - - -	53 10 7	- -	900	—				
Bright, G. W. - - -	Confectioner - -	1,03,468 13 9	- -	- -	- ditto - - -	- - -	- -	26,300	Payable to the widow.	—			
							Less *Rs.* 1,220. 0. 7. due to the administrator.						
Brae, Thomas, sen. - -	Indigo planter - -	28,082 3 -	- -	2,13,300	Legatees, maintenance, and education of children.	- - -	- -	189,100	Payable to children.	—			
							Less *Rs.* 2,985. 8. 8. due to the administrator.						
Brightman, Ensign J. E. -	39th Regt. N. I. -	780 2 -	- -	- -	Creditors - - -	242 8 3	—	—					
Bracken, Captain John -	29th Regt. N. I. -	2,071 3 9	- -	- -	- ditto - - -	234 7 1	—	—					
Brewster, James - - -	Civil service - -	3,757 10 1	- -	- -	- ditto - - -	- - -	- -	1,900	—				
							Less *Rs.* 435. 10. 4. due to the administrator.						
Brett, Captain G. A. - -	41st Regt. N. I. -	158 - 6	- -	- -	Administratrix - -	—							
Brown, Dr. A. - - -	M. D. - - -	2,685 10 -	- -	- -	Creditors - - -	1,227 5 5	—	—					
„ W. D. - - -	Merchant - -	1,854 9 3	- -	- -	Towards testamentary expenses, &c.	1,630 6 3	—	—					
„ John - - -	Of Rangoon, Preventive Officer.	44 6 -	- -	- -	- - ditto - - -	20 3 4	—	—					

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAME OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Browne, Lieut. G. D.	1st E. Bengal Fusiliers.	388 4 6	—	—	Towards testamentary expenses, &c.	335 11 3	—	—				
Bruce, Lieut. Robt. R.	Bengal Artillery	—	10 Simla Bank Shares		ditto	—	—	5,400	—			
							Less *Rs.* 168 13. 7. due to the administrator.					
Bunnoo, Shaik	—	No assets	—	—								
Burnett, Captain J. M.	In the service of E. I. Company.	2,526 — 4	—	—	Creditors and legatees	—						
Burton, Thomas	Of Agra	591 8 7	—	—	Creditors	—						
Burnside, Lieut.-colonel H.	61st Regiment of Foot	5,005 14 10	23,000	—	Executrix	—	—	25,400	Payable to the widow, executrix, as also legatee.	—		
							Less *Rs.* 551. 3. 11. due to the administrator.					
Buckton, Gunner J.	Bengal Artillery	1,028 — 2	—	—	Creditors and legatees	—						
Butcher, Charles	—	427 3 3	—	—	Creditors	194 1 8	—	—				
„ Mrs. Mary	—	—	2 Agra Bank Shares		Funeral and testamentary expenses, &c.	29 4 —	—	1,200	—			
„ W. N.	Of Moulmein	1,107 10 1	—	—	ditto	—	—	1,000	—			
							Less *Rs.* 43. 3. due to the administrator.					
Byng, Captain E. D.	1st European Bengal Fusiliers.	6,377 — —	—	—	Creditors and widow	—	1,100	4,700	—			
							Less *Rs.* 1,579. 9. 9. due to the administrator.					
Byrne, Miss Ann	—	321 — —	—	—	Next of kin	—						
„ Felix	Preventive Officer	420 5 3	—	—	Son	—						
Calder, J.	Planter	2,011 9 5	—	—	Creditors and law charges.	—	*Rs.* 867. 2. 6. due to the administrator.		—	—	—	Suits pending.
Cameron, Alexander	Assistant in the Marine Superintendent's Office of Calcutta.	575 2 1	—	—	Creditors and legatee	8 — 3	—	—				
„ F. M.	Indigo planter	2,294 11 —	—	—	Creditors	417 12 10	—	—				
Caldwell, Major-general Sir Alexander.	In the service of E. I. Company.	1,100 14 1	6,500	—	Towards testamentary expenses, &c.	416 11 8	—	7,100	—	—	Unclaimed.	—
Caddell, Captain W.	— ditto	5,340 5 6	—	—	Creditors	327 15 1	—	—				
Campbell, Alexander A.	Deputy Superintendent of Police.	828 4 1	—	—	ditto	24 1 —	—	—				
„ Major K.	45th Regiment N. I.	437 15 7	400	47,400	ditto and executrix	82 6 4	—	500	—			
„ D. K.	Clerk of N. W. Bank of India.	2,094 1 4	—	—	ditto; father	17 3 4	—	—				
„ Dr. Neil	H.C. steamer "Pluto"	1,082 8 2	1,500	5,600	ditto; legatees	15 2 10	—	1,100	—			
„ James	—	6,097 12 6	—	—	Towards testamentary expenses, &c.	256 12 8	—	5,400	—	—	Unclaimed.	—
„ Ensign A. P. M.	69th Regiment N. I.	2,581 9 7	—	—	Creditors	427 13 10	—	—				

Carey, Peter	*Deputy-Assist. Commissary.*	*1,345 11 –*	– –	– –	Legatees, law charges	105 12 11	– –	1,000	—		
Carrington, Mrs. E.	Of Patna	229 7 3	– –	– –	Towards testamentary expenses, &c.	223 5 11	—	—			
Cardew, F.	Civil service	– – –	7,500	165,000	Creditors	– – –	7,500 Less *Rs.* 6,517. 3. 6. due to the administrator.	165,000	Payable to the children for their maintenance.	—	
Carter, Richard	Publican	64 13 10	– –	– –	Towards testamentary expenses, &c.	60 2 10	—	—			
Carty, Gunner James	Bengal Artillery	683 14 7	– –	– –	Legatee	—					
„ John		3,176 6 1	– –	– –	Towards testamentary expenses, &c.	181 12 5	3,000	—			
Castle, Mrs. Elizabeth		483 1 6	– –	– –	Children	—					
„ Lieut. W. B.	38th Light Infantry	2,541 4 3	– –	– –	Creditors	442 – 11	—	—			
Cathcart, Lieut. James	50th Regt. N. I.	2,422 2 9	– –	– –	– ditto	76 11 9	—	—			
Caunter, Richard	Penang, Civil service	5,563 5 5	115,500	– –	Executors	12 1 5	– –	600	—		
„ Legatees		122 10 8	4,600	– –	Legatees	—					
Cearns, W. N.	Pilot	1,640 15 3	16 Assam Tea Company's Shares.		Creditors	—					
Cecil, C. F., *alias* C. A. Fenwick.	Of Moulmien	49 3 9	– –	– –	Widow	—					
Chapple, Thomas	Engineer	1,809 13 8	– –	– –	Creditors	10 4 6	—	—			
Charde, D.	Postmaster of Meerut	No assets –	—								
Childs, Captain R. H.	Mariner	4,406 5 9	5,400	2,600	Creditors	– – –	2,900 Less *Rs.* 7. 3. 5. due to the administrator.	2,600	Applied for the children's support and education.	—	
Chinneaux, Jean Peire	Indigo planter	5,614 9 8	– –	– –	– ditto	117 1 2	– –	5,100	– – – –	– – –	Unclaimed.
Chatelier, Joseph	Sub-Assistant Surveyor.	766 8 6	– –	– –	Towards testamentary expenses, &c.	27 9 11	– –	700	—		
Chisholm, J. S.		723 1 9	– –	– –	– ditto	517 1 11	—	—			
Christie, Major E.	Artillery	4,186 15 9	– –	– –	Creditors	– – –	– – Less, *Rs.* 291. 1. 11. due to the administrator.	1,200	—		
Clarendon, Hy. H. C.	Stable-keeper	199 10 9	– –	– –	– ditto	—					
Claxton, William		522 15 11	– –	– –	– ditto	67 15 5	—	—			
Clayton, Sergeant Charles	Assistant Overseer of Public Works.	1,938 10 7	– –	– –	Creditors, and widow	– – –	– – Less, *Rs.* 225. 10. 10. due to the administrator.	1,000	— Applied for the support of children.	—	
Clifton, Edward A.	Civil service	7,695 6 5	– –	– –	Ditto, and administrator in England.	—					
Clifford, J.	Band Master	72 11 –	– –	– –	Towards testamentary expenses, &c.	52 2 4	—	—			
Colquhoun, Wm., *alias* Colquhoun Sterling.		2,115 4 3	52,600	– –	Executor and Executrix	252 14 10	—	—			
Combes, P.	Dall Inspector	1,747 – 2	– –	– –	Creditors and Legatees	302 10 11	—	—			
Comon, Dr. T. R.	8th Irregular Cavalry	1,580 13 8	– –	– –	Creditors	178 13 6	—	—			
Compton, John	Steward	330 4 –	– –	– –	– ditto	210 10 2	—	—			
Collier, Gunner J.	Bengal Artillery	648 – 2	– –	– –	– ditto	14 1 1	—	—			
Collins, Dr. Alfred		4,059 – 6	– –	– –	– ditto; father	7 6 –	—	—			
Collett, H.	Chemist and Druggist	29 1 6	– –	– –	Creditors	—					
Conlon, John	Preventive Officer	829 10 –	– –	– –	– ditto, and widow	424 7 7	—	—			

(continued)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Conlan, Thomas	Deputy Collector and Joint Magistrate at Minnur.	5,831 15 2	—	—	Creditors	43 10 8	500	2,200	—			
Copp, Mrs. Maria	—	455 5 1	1,100	2,000	Son	113 — 1	1,100	500	—			
Cops, Capt. A.	Mariner	12,964 1 2	3,000	14,000	Creditors	129 9 6	1,000	25,800	—			
Cooper, Lieut. L. Henry	1st E. B. Fusiliers	1,067 6 1	—	—	ditto	88 13 11	—	—				
Coupland, R.	Jockey	2,000 — —	—	—	Mother	—	*Rs.* 0. 9. 0. due to the administrator.		—			
Connell, Quartermaster-Sergeant J.	H. M. 80th Regt.	4,308 11 8	—	4,800	Charges, children's passage to Europe, &c., testamentary expenses.	—	4,300 Less *Rs.* 1,024. 4. 4. due to the administrator.	4,800	Applied for the children's maintenance.	—		
Cowley, Major C. W.	Invalid	1,082 14 10	—	—	Creditors	325 4 8	—	—				
Cox, William	Indigo planter	119 4 6	—	—	Funeral and testamentary expenses, &c.	72 14 2	—	—				
Crawfurd, Lieut.-Col. G. R.	Artillery	7,621 1 8	—	—	Creditors	—						
Crawford, Lieut. A. R.	19th Regt. N. I.	1,433 13 2	—	—	ditto	—	— Less *Rs.* 54. 6. 4. due to the administrator.	1,000	—			
Craig, Alexander	Iron-founder	47,287 5 10	9,900	4,500	Ditto and legatees	1,215 2 10	—	—				
Craig, A. *S/a* Mrs. C. Craig	—	3,612 6 1	4,600	8,000	Herself	3 — —	—	—				
„ A. Craig, jun.	—	1,554 10 6	4,600	8,000	Maintenance, &c., and travelling expenses previous to the division of the funds.	353 7 10	4,600	8,000	Applied for the legatee's maintenance.	—		
„ Miss C. Craig	—	1,522 8 6	5,300	7,300	Ditto	257 1 10	5,300	7,300	Ditto - ditto	—		
„ James	—	No assets realized	—	—	—	—	*Rs.* 0. 1. 0. due to the administrator.		—			
„ Mrs. M.	—	4,416 15 10	—	5,000	Creditors and legatees	—	— Less *Rs.* 139. 5. 7. due to the administrator.	6,300	Interest on 5,000 *Co.'s Rs.*, payable to legatees.	—		
Craigie, Dr. George	Marine surgeon	4,419 10 —	—	—	Creditors	—	— Less *Rs.* 124. 1. 11. due to the administrator.	3,700	—			
Crawley, W. F.	—	No assets realized	—	—	Towards testamentary expenses, &c.	—	*Rs.* 9. 14. 5. due to the administrator.		—	—	—	Suits pending.
Croley, Lieut. G. A.	26th N. I.	1,626 — —	—	—	Administrator	174 4 8	—	—				
Crichton, Lieut.-Colonel D.	In the service of the E. I. Company.	17,399 7 4	54,100	—	Towards testamentary expenses, &c.	607 15 1	5,300	64,400	Interest on 20,000 *Co.'s Rs.*, payable to widow.	—		
Cubitt, Lieut. Thomas	40th N. I.	2,081 1 2	—	—	Creditors	118 12 1	—	—				
Cumberlege, Major J.	41st Regt. N. I.	470 — —	—	—	Towards testamentary expenses, &c.	461 6 4	—	—				

Cunningham, Captain J. D.	Engineer	8,204 3 1	- -	- -	Creditors	- - -	- -	4,100 Less *Rs.* 240. 7. 7. due to the administrator.	—			
Curnin, John	Assay-master	195 10 2	- -	- -	Funeral and testamentary expenses, &c.	—						
Curtin, Sergeant J.	H. M. 32d Foot	3,861 10 4	- -	- -	Widow	- - -	- -	2,600 Less *Rs.* 169. 2. 8. due to the administrator.	—			
Daley, J. C.	Assistant, Secundra Orphan Press, at Agra.	422 6 1	- -	- -	Creditors	32 5 -	—	—				
Daly, J. M.	Assistant in the Foreign Department of India.	394 14 3	- -	1,300	Legatee; father	—						
Dalston, Major G.	58th N. I.	1,613 12 10	- -	- -	Creditors	117 10 11	—	—				
Daniel, Captain, J. H.	Artillery	1,220 12 -	- -	- -	- ditto	350 7 5	—	—				
Davidson, Captain G.	Mariner	262 1 -	- -	- -	- ditto; father	—						
„ T. R.	Civil service	64,420 11 4	- -	- -	Creditors	- - -	- -	39,800 Less *Rs.* 5,408. 3. 5. due to the administrator.	—			
Davies, John and Charles	Unknown	42 3 10	61,900	7,100	Representatives in England.	—						
„ H. Pelham	Of America	2,490 - 9	18,000	1,000	Next of kin	—						
Davis, Bugle-major G. W.	6th B. Artillery	1,341 13 7	- -	- -	Legatee	—						
„ Miss Mary	- - - -	166 10 5	- -	500	Funeral and testamentary expenses, &c.	69 11 8	- -	500	—			
Da Cruz, Edward A.	- - - -	1,286 6 2	- -	- -	Next of kin	—						
„ J. C.	Trader	900 11 11	- -	- -	- ditto	—						
„ Mrs. Rose	- - - -	457 5 -	- -	- -	Daughter's support	325 9 5	—	—				
Day, Lieut. Edward W.	Artillery	2,209 2 4	- -	- -	Creditors; father	23 8 8	—	—				
„ Ensign H. W.	13th N. I.	3,258 6 7	- -	2,000	- ditto	- - -	3,000 Less *Rs.* 508. 12. 1 due to the administrator.	2,000	—			
Deedes, Edward	Civil service	61,751 3 5	- -	15,600	- ditto, and legatees	1,489 9 10	- -	500	—			
„ *S/a.* Geo. Deedes	- - - -	8,409 7 7	6,000	36,600	Expenses	567 2 2	6,500	45,200	—			
„ „ Mrs. E. Deedes	- - - -	395 - -	3,000	18,300	Widow	—						
De Bast, Mons. Charles	Merchant, of Delhi	417 - 8	- -	- -	Creditors	—						
De Brandy, Mons. Carlo	Of Jessore	4,212 15 8	- -	- -	Law and testamentary expenses.	- - -	3,700 Less *Rs.* 537. 0. 1. due to the administrator.	- -	- - - -	- - -	- - -	Suits pending.
De Fountain, Captain A.	Invalid	946 15 7	- -	- -	Creditors	160 8 -	—	—				
Demello, Lazarus	Trader	158 12 5	- -	- -	Funeral and testamentary expenses.	—						
„ Mrs. Anna M.	- - - -	133 - 6	- -	- -	Creditors	49 - 2	- -	- -	- - - -	- - -	Unclaimed.	—
Denton, Miss Mary H.	- - - -	9,151 7 2	- -	- -	Law charges, legatee	- - -	*Rs.* 100. 6. 5. due to the administrator.					
„ Beebee Peanah (Life interest).	- - - -	3,679 12 3	- -	- -	Charges, testamentary expenses, &c.	- - -	- -	3,100 Less *Rs.* 218. 12. 11. due to the administrator.	Payable to pensioner.	—		
De Paiva, Mrs. J. V.	- - - -	50,243 14 -	3,20,900	- -	Administrator	—						

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued.*

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
De Rozario, Miss A.	-	3,378 6 7	- -	- -	Creditors and legatees	- - -	- -	700	Payable to legatee	—		
							Less *Rs.* 43. 13. 9. due to the administrator.					
„ Mrs. Paulina	-	1,975 2 -	- -	- -	Funeral and testamentary expenses, &c.	269 1 10	- -	1,400	- - - -	- - -	Unclaimed.	—
„ Charles	Assistant Lahore Press	363 10 -	- -	- -	Creditors	316 13 8	—	—				
„ J.	-	75 - -	- -	- -	Funeral and testamentary expenses, &c.	- - -	*Rs.* 19. 6. 10. due to the administrator.		—			
Denny, Ensign C. A.	40th Regt. N. I.	641 2 10	- -	- -	Administrator	4 10 -	—	—				
De Rozio, Mrs. A. M.	-	109 - 6	- -	- -	Funeral and testamentary expenses, &c.	1 9 -	—	—				
Des Forges, W.	Veterinary surgeon	2,984 5 3	- -	- -	Creditors; father	—						
De Silva, Domingo	Zeminder	11,749 9 -	1,41,300	54,500	Law charges, &c.	- - -	1,41,300	51,000	- - - -	- - -	- - -	Suits pending.
							Less *Rs.* 3,375. 9. 5. due to the administrator.					
De Sylva, M. P.	Clerk in the office of Secretary of Government of India.	215 8 10	- -	- -	Creditors	87 15 6	—	—				
Dixon, A. R.	Timber merchant, Moulmein.	7,874 - 5	- -	1,000	Administrator	—						
„ Captain Thomas	43d Regt. N. I.	8,039 1 7	- -	1,000	Creditors; executor and executrix.	175 - 1	—	—				
Dillon, Peter	Mariner	486 10 1	- -	- -	Funeral and testamentary expenses, &c.	315 7 1	—	—				
Dixson, Captain W. O.	Ditto	459 9 6	- -	- -	Creditors	—						
Don, Captain W. G.	43d Regt. N. I.	11,539 2 8	- -	- -	- ditto	- - -	- -	800	—			
							Less *Rs.* 73. 11. 6. due to the administrator.					
Donaldson, John	Assistant indigo planter.	6,926 12 -	22 Docking Company's Shares.		Next of kin	579 8 11	—	—				
Donnelly, Captain F. S. (second account.)	27th Regt. of Bengal	3,595 15 5	- -	- -	Towards testamentary expenses, &c.	3,481 12 10	—	—				
Donnovan, Mr. & Mrs. James	Preventive Officer	259 12 10	- -	- -	Creditors	122 10 9	—	—				
Dowson, Captain R.	5th N. I.	632 2 4	15 Agra Bank Shares		- ditto	149 3 10	—	—				
Drummond, Hon. F.	Civil service	10,335 - -	- -	1,000	- ditto	—						
Dun, Major-general J.	29th Regiment	2,533 6 8	22,100	- -	- ditto	28 - 4	—	—				
Dubrauche, J.	Hotel keeper	1,000 - -	- -	5,000	Funeral and testamentary expenses, &c.	179 7 7	- -	5,000	Payable to the widow	—		
Duncan, Captain W. H.	In the service of Hon. Company.	8,318 7 10	6,500	11,500	Legatee	—						
„ John	Moorshedabad	802 - 6	1,000	- -	Creditors	3 14 5	—	—				
Dunster, Ensign J. N.	38th Light Infantry	943 7 -	- -	- -	- ditto	—						
Duff, W. H.	Solicitor	732 7 -	- -	- -	- ditto	314 13 11	—	—				

Dugat, P. L.	Government clerk	612 – –	5,100	500	Daughter and her husband.	—					
Duhan, James	Opium agent	1,532 6 3	– –	– –	Creditors	—					
Duncan, Dr. James	E. I. Company, B. M. establishment.	84 12 2	31,600	52,100	Towards testamentary expenses, &c.	– – –	31,600 Less *Rs.* 2,824. 9. 1. due to the administrator.	52,100	Payable to the executor.	—	
Dyce, D. O., *alias* Dyce Sombre.	Gentleman	2,390 10 –	– –	– –	Law charges	738 6 4	—	—			
„ Charles A.	Broker	515 13 9	– –	– –	Creditors	43 4 10	—	—			
Eaglestone, George	– – – –	2,894 10 3	21,400	– –	Executors	—					
„ George A.	– – – –	343 1 11	10,000	– –	– ditto	—					
Eatwell, Lieut. A. C.	In the service of E. I. Company.	1,571 – –	– –	– –	Creditors	—					
Edwardes, Lieut. H. J.	15th N. I.	3,105 13 7	– –	– –	– ditto	104 15 10	– –	600	—		
Edwards, Captain R.	Mariner	3,935 10 3	1,000	1,500	Administrator	—					
„ Sergeant J.	Assistant overseer	670 2 1	– –	– –	Creditors and legatee	—					
„ George	Groom	127 1 6	– –	– –	Funeral and testamentary expenses, &c.	64 12 3	—	—			
Egerton, Captain J. F.	Artillery	11,874 3 8	– –	– –	Creditors and legatee	58 12 10	—	—			
Elderton, Lieut. E. D.	10th Regt. N. I.	1,581 3 2	– –	– –	Creditors	110 3 5	—	—			
Eccles, Lieut. J. W.	2d E. B. Fusiliers	102 13 6	– –	– –	– ditto	83 10 5	—	—			
Ekins, Lieut. G. E.	1st Bengal Fusiliers	680 6 9	– –	– –	Towards testamentary expenses, &c.	51 11 4	– –	500	—		
Elliott, Lieut. G.	2d – ditto	568 15 9	– –	– –	Creditors	95 9 6	—	—			
Ellis, Lieut. H. A. L.	1st Light Cavalry	5,148 – 1	– –	– –	– ditto	1,071 15 11	—	—			
„ John C.	Merchant	1,710 9 3	– –	– –	– ditto	214 15 5	1,100	—			
Ely, C. E. S.	Clerk to Sir A. Buller	3,580 7 –	– –	– –	Creditors; mother	2 14 11	—	—			
Evans, Ensign Edward	45th N. I.	1,517 15 2	– –	– –	Creditors	92 3 4	—	—			
„ G. W.	Mariner	110 13 3	– –	– –	– – ditto	—					
Every, Thames L.	Mariner	1,715 9 4	– –	– –	Funeral and testamentary expenses, &c.; creditors.	576 9 4	– –	500	—		
Falconer, Captain Peter	Mariner	153 2 6	40,000	– –	Executrix	51 1 5	—	—			
Farquharson, Lieut. A. O.	38th Regt. N. I.	528 1 5	– –	– –	Creditors	87 8 1	—	—			
Farnell, Ensign W. A. P.	59th Regt. N. I.	1,304 3 1	– –	– –	– ditto	432 14 –	—	—			
Feeny, T.	Of Mooltan	No assets realised.	–	– –	Charges; postages	– – –	*Rs.* 1. 2. 4. due to the administrator.		—		
Fell, Robert	Patrol attached to the Mirzapore division of Customs.	1,561 7 1	– –	– –	Creditors	237 8 4	—	—			
Fenwick, Henry	Government clerk	1,202 1 10	– –	– –	– ditto	20 – 3	—	—			
Ferguson, Lieut. R.	4th Regt. N. I.	2,467 11 11	– –	– –	– ditto	235 15 –	—	—			
Finlay, John	Merchant	66 – –	– –	– –	– ditto	9 4 5	—	—			
Fisher, Lieut. William	Governor-General's body guard.	3,849 11 4	– –	– –	– ditto	77 12 6	—	—			
Fleming, D.	Of Cabul	172 5 6	– –	– –	Towards testamentary expenses, &c.	146 9 11	—	—			
Fletcher, C. P.	Merchant	12,364 8 7	– –	– –	Executor	—					
Flyter, Captain James	64th Regt. Bengal N. I.	1,984 3 10	– –	– –	Creditors	8 8 2	– –	900	—		
Ford, M. W., Paymaster	H. M. Service	3,971 7 7	– –	– –	Government claim	—					
Forrester, William	Pensioner	No assets	–	– –	Expenses debited to Administrator-general.	—					
Fortune, Captain A.	Of Lucknow, in the military service of E. I. Company.	3,162 6 4	15,500	– –	Charges; testamentary expenses.	– – –	5,000 Less *Rs.* 199. 14. due to the administrator.	11,200	Payable to pensioner	—	

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.		Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.				
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.* *Co.'s Rs.*				
Fowles, Henry	—	1,440 14 10	1,300	—	Legatees	10 13 2	— —				
Fox, Captain, Alfred	Mariner	110 — —	—	—	Towards testamentary expenses, &c.	103 9 7	— —				
Foy, C. C.	Revenue Surveyor	328 — —	—	—	— — ditto	321 1 —	— —				
Francis, Mrs. Mary B.	—	3,576 5 1	37,800	—	Children	— 3 11	— —				
„ *S/a* Miss E. Francis	—	7,045 6 6	—	—	Charges; testamentary expenses.	418 1 2	— 6,000	—			
Franklin, Lieut. R. M.	40th Regt. N. I.	3,201 7 3	—	—	Creditors	100 9 2	— —				
Franks, Charles W.	Assistant Chemist and Druggist.	870 7 11	—	—	— ditto	—					
„ George	Bazar Sergeant	1,844 4 —	—	—	— ditto	17 11 3	— 1,700	—			
Fraser, Captain E. W.	H. M. 29th Regt. of Infantry.	1,129 8 8	—	—	— ditto	149 8 4	— 700	—			
„ James E.	Merchant's clerk	2,331 8 10	—	—	— ditto	1,122 9 8	— 700	—			
„ Lieut. S. C.	2d Bengal Fusiliers	1,266 13 11	—	—	— ditto	218 6 7	— 500	—			
„ Major W.	—	916 3 10	—	—	Charges of testamentary expenses.	155 5 6	— 700	—	—	Unclaimed.	—
Frederick, Lieut.-col. H. O.	67th Regt. N. I.	10,499 12 1	4,700 20 Simla Bank Shares.	18,500	Creditors and legatees	—	— 37,300 Less *Rs.* 1,588. 3. due to the administrator.	Payable to legatee.	—		
French, John G.	Deputy Magistrate	712 1 6	—	—	— — ditto	44 4 8	— —				
„ Sergeant R.	In the regt. of Sappers and Miners.	2,146 11 10	—	—	Charges of testamentary expenses.	—	— 2,000 Less *Rs.* 224. 14. 8. due to the administrator.	—			
Frost, Capt. William W.	Mariner	935 13 6	—	—	Creditors	—					
Frushard, Lieut.-col. James	2d European Regt.	6,403 9 10	—	—	— ditto	8 12 4	— 1,900	—			
Fullerton, John	Assistant overseer	327 9 6	—	—	Charges of testamentary expenses.	309 6 2	— —				
Gale, Captain C.	Invalids	1,062 1 10	—	—	Creditors	2 3 3	— —				
„ Miss F. C. A.	Spinster (Lunatic)	37,984 9 3	38,200	20,900	Next of kin	470 6 8	— —				
„ S/a Mrs. J. C. Napier	—	4,874 11 2	15,100	—	Herself	69 5 3	— —				
„ S/a C. R. Gale	—	1,417 3 8	19,100	10,400	Himself	—					
„ P.	—	15 3 9	—	—	Towards testamentary expenses, &c.	10 11 2	— —				
Garrett, Mrs. G.	—	33 5 6	—	—	Creditors	—					
Gennys, Lieut. R. H.	44th N. I.	10,469 4 11	—	19,700	Legatees	328 4 1	— —				
Gerard, Captain P.	Invalid	2,246 12 2	—	—	Creditors and next of kin	24 7 —	— —				
Gibbes, Lieut. P. O.	41st Regt. N. I.	1,273 3 —	—	—	— — ditto	444 14 9	— —				
Gibbs, John	Inspector	63 6 8	—	—	Funeral, and testamentary expenses, &c.	15 2	— —				
Gibson, Stewart	Indigo planter	1,960 1 4	—	—	Creditors	313 3 2	— —				
„ Isaac	A ward of the Lawrence Asylum at Kussowlee.	169 6 9	—	—	Next of kin.	—					

„ Robert, senior	Tailor	3,05,995 9 3	—	—	Law charges, repairs to house, &c.	—	1,33,600 Less *Rs.* 4,081. 5. 10. due to the administrator.	1,14,200	—	
Gilbert, Lieut. F. M'D.	2d N. I.	715 14 9	—	—	Creditors	498 9 8	—	—		
Giles, Ensign J. P.	73d N. I.	640 14 1	—	—	- ditto	10 1 11	—	—		
Gilmore, Lieut. J. F.	Artillery	872 15 5	—	—	- ditto	—				
„ John	Merchant	507 15 11	15,800	1,000	Major J. Lang, for the trustees of Captain and Mrs. Satchwell.	—	*Rs.* 40. 12. due to the administrator.		—	
Glennie, Dr. W. R.	24th Regt. N. I.	1,039 14 3	—	—	Creditors	320 8 8	—	—		
Goldie, Bt. Major B. W.	Engineer, in the military service of E. I. Company.	2,837 10 4	—	—	- ditto	—	1,800 Less *Rs.* 26. 4. 1., due to the administrator.	—	—	
Gomes, Mrs. Margaret	—	1,066 5 —	—	—	- ditto	99 11 5	—	—		
Goodman, William	Of Jessore	339 7 11	—	—	Widow	—				
Gordon, Capt. Jas. T.	15th Regt. of Bengal N. I.	560 5 —	2,600	9,000	Administrator	—				
„ John	Barrister	102 — —	—	—	Widow	—				
„ Dr. A. C.	1st N. I.	2,654 5 9	—	—	Creditors	—	—	600 Less *Rs.* 5. 12. 4. due to the administrator.	—	
„ Ensign George	14th N. I.	355 11 10	—	—	- ditto	177 — 8	—	—		
„ James	Of Burdwan	346 15 2	—	—	- ditto	161 11 11	—	—		
„ George J.	—	1,783 13 5	25,000	—	- ditto and trustees	6 — —	—	—		
Gorringe, Capt. C.	Mariner	4,021 7 8	400	500	Legatees	18 14 9	—	—		
Govan, Lieut. J.	14th Regt. N. I.	958 11 9	—	—	Creditors; father	31 12 3	—	—		
Grant, Sir John P.	Prime Judge, Supreme Court.	47,000 2 5	—	—	- ditto, and executors, Government, per letter of 8 Oct. 1852.	—				
„ James C.	Engineer	4,352 15 6	—	—	Next of kin	—				
„ William	Engineer	1,142 11 7	—	2,000	- ditto	—				
„ John James	Shoemaker	270 — —	—	—	Creditors	—				
„ Dr. J.	Civil surgeon, Tipperah.	181 — 10	—	—	Charges, postages, &c.	177 5 3	—	—		
Gray, Gunner J.	Gunner in the 1st Company 6th B. of Artillery.	245 7 6	—	—	Creditors, and mother	—				
„ Major J. C. C.	18th Regt. N. I.	7,010 14 2	—	—	Creditors	1,024 11 7	—	—		
Graham, A. W.	Indigo planter	5,122 5 1	Three Bengal Coal Company's Shares.		- ditto, and son	—	— Less *Rs.* 1,162. 10. 1. due to the administrator.	5,900	—	
Greenway, Mrs. A. E.	—	4,669 5 10	—	—	Children	486 15 —	—	—		
„ *Sla.* Rose and W. J. Liddell.	—	919 13 1	—	—	Charges, testamentary expenses.	895 8 8	—	—		
„ C. C., trust for Mrs. Foley.	—	2,005 8 —	—	16,200	Trustees	—				
Greig, Dr. A.	5th Regt. N. I.	4,916 6 9	—	1,900	Creditors	1,452 5 3	—	4,700	—	
Griffin, Major J.	In the service of E. I. Company.	2,284 15 —	—	—	- ditto	383 4 5	—	—		
„ William	Indigo planter	13,216 13 1	—	—	Next of kin	—				
„ Ensign J. C.	26th Regt. N. I.	638 1 2	—	—	Creditors	29 7 5	—	—		

(continued)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.		Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.				
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.* *Co.'s Rs.*				
Griffiths, Dr. S. M.	38th Light Infantry	8,890 2 7	4 Agra Bank Shares, 42 Oriental Life Insurance Shares.		Towards testamentary expenses, &c.	- - -	16,300 7,700 4 Agra Bank shares; Less *Rs.* 650. 5. 10. due to the administrator.	—			
Grindall, Lieut. F. C.	Engineers	1,725 6 1	- -	- -	Creditors	238 3 7	— —				
Grome, C. F.	Cattle Sergeant	766 - 6	- -	- -	- ditto	220 5 8	— —				
Grose, John	Merchant	6,241 2 7	- -	- -	Charges, testamentary expenses, &c.	101 - 5	- - 5,700	—			
Grounds, Captain J. E.	46th N. I.	1,155 10 10	- -	- -	Creditors	163 6 10	— —				
Gundry, Lieut. C. B.	12th Regiment of Bengal N. I.	1,612 - 11	- -	- -	Creditors, and father	505 14 11	— —				
Graham, J. B.	- - - -	3,078 3 4	- -	1,35,100	Charges, testamentary expenses, Government agent fees.	- - -	1,200 1,38,300 Less *Rs.* 4,179. 1. 3. due to the administrator.	—			
Grolier, Gaston	Merchant	76,865 3 3	- -	- -	Administrator	—					
Hadow, C. S., Trustee of Mrs. Menzies.	- - - -	298 15 -	12,000	- -	Trustees	—					
Haggard, M.	Pilot	154 5 6	- -	- -	Charges, testamentary expenses.	9 2 -					
Haines, Lieut. E.	Engineer in the military service of the E. I. Company.	10 13 7	- -	- -	- - ditto	- - -	*Rs.* 96. 1. 10. due to the administrator.	—			
Halhed, Lieut. C. N.	54th N. I.	3,174 6 5	- -	- -	Creditors and executrix	- - -	- - 1,500 Less *Rs.* 203. 8. due to the administrator.	—			
Halliday, Dr. A., trust for Jane Smith.	- - - -	886 15 5	15,000	- -	Charges, testamentary expenses.	94 12 11	- - 15,900	Payable to Miss Smith	—		
„ trust for Mary Smith, now Mrs. Dixson.	- - - -	294 6 -	10,200	- -	- ditto - ditto	206 13 1	- - 10,100	Payable to Mrs. Dixson	—		
Hallpike, C.	Engineer	25 2 -	- -	- -	- ditto	24 9 -	— —				
Hampton, John	Of Goruckpore	4,484 12 8	- -	- -	Creditors	—					
Hannan, Sergeant J.	In the service of the E. I. Company.	974 15 -	9 Agra Bank Shares		Charges, testamentary expenses.	44 9 3	500 6,400	—			
Hancock, Mr.	Of Moulmein	21 - 5	- -	- -	- ditto	11 1 8	— —				
Harcourt, Lieut. Henry	68th Regt. N. I.	1,040 6 2	- -	- -	Creditors	182 10 10	— —				
Harknett, Thomas	Tavern-keeper	350 - -	- -	- -	Creditors	136 6 1	— —				
Harley, H. L.	Engineer	976 8 4	- -	- -	Legatees	—					
Harris, John	- - - -	258 12 8	- -	7,000	Widow	—					
„ Captain James S.	Invalid	533 2 1	- -	- -	Creditors	118 3 7	— —				
Harrison, Mr. J. L.	- - - -	847 7 8	- -	- -	- ditto.	—					
Hart, Alexander	Assistant, Assam Tea Company.	797 4 6	- -	- -	- ditto	- - -	- - 600 Less *Rs.* 142. 4. 5. due to the administrator.	—			

Hay, Lieut. William	Artillery	3,572 6 8	—	—	Creditors	—	—	—	
Hayden, F. H.	Mariner	831 15 6	—	2,300	ditto, and uncle	– 14 10	—	—	
Hayes, Sergeant Timothy	—	390 7 11	5 Delhi Bank Shares		ditto, and legatees	30 – 5	—	—	
Haynes, Dr. Wm.	E. I. Company, B. M. Establishment.	1,205 10 1	—	—	Funeral and testamentary expenses, &c.	—	1,200 Less *Rs.* 247. 3. 7. due to the administrator.	—	
Hayton, John L.	Sugar-boiler	10,000 – –	—	—	Widow	—	1,500 Less *Rs.* 1,142 12. 7. due to the administrator.	8,800	Applied for the widow's maintenance.
Heberlet, A.	Registrar, Military Department.	159 10 7	—	1,000	Colvin, Ainslie, Cowie & Co., for trustees.	—			
Heather, Mrs. E.	—	4,939 3 9	500	5,000	Creditors and legatees	—	— Less *Rs.* 855. 9. 4. due to the administrator.	5,100	Payable for the board and education of Miss W. and T. Nelson.
„ *A/c.*, Legatees of Mathew Cranenburgh.	—	446 10 8	—	—	Charges, testamentary expenses.	—	— Less *Rs.* 42. 9. 8. due to the administrator.	500	—
Heera Bye	Native female of Nepaul.	621 8 –	—	—	Creditors	228 14 –	—	—	
Henderson, Miss H.	Spinster	—	—	10,000	Administratrix	—			
Henley, John	Stevedore	1,296 15 –	—	—	Creditors	17 6 2	—	—	
Henry, William	Dentist	930 11 8	—	—	ditto	152 11 9	—	—	
Herbert, Captain R. A.	46th N. I.	5,772 15 2	6,000 100 East India Railway Company's Shares.	10,500	Next of kin	—			
Hewes, Henry H.	American merchant	927 13 11	—	—	Creditors	355 14 9	—	—	
Hewick, Richard	Tailor	2,644 11 11	—	—	ditto, and next of kin	29 8 4	—	—	
Hickey, Captain Charles E.	1st Regiment of Bengal N. I.	8,731 4 6	—	—	ditto	1,417 13 –	—	—	
Hickman, Captain J. P.	Invalid	8,979 9 6	—	—	Creditors	—	5,900 Less *Rs.* 698. 11. 1. due to the administrator.	2,800	—
Hicks, Wm. George	Engineer	1,021 13 10	—	—	ditto	95 12 4	—	—	
„ Captain G. W. S.	8th Bengal Light Inf.	5,764 2 3	—	—	ditto	565 7 3	—	—	
„ Captain R. H.	1st E. B. Fusilier	7,075 12 5	—	—	ditto	1,039 2 2	—	—	
Higgins, G. E.	Solicitor	8,157 4 8	—	—	Trustees	—			
„ G. F.	—	188 12 8	—	—	Creditors	124 11 6	—	—	
Higginson, Lieut. Thos. E.	39th Regiment N. I.	687 3 –	—	—	ditto	244 9 4	—	—	
Hiller, Ensign H. C.	20th N. I.	2,873 3 8	—	1,600	ditto; father	—			
Hilton, Captain John	Mariner	4,076 4 –	—	—	ditto	160 7 11	—	—	
Hodgson, Brian	Civil service	2,713 10 –	—	—	ditto	96 6 11	—	—	
Hodges, N.	Assistant Revenue Surveyor.	877 5 11	—	—	ditto	594 9 11	—	—	
Holgate, James	Of Tirhoot	1,241 4 3	—	—	ditto	—			
Holloway, P. H.	Customs officer	129 11 –	—	—	ditto	—			
Holton, John, *alias* John Ropetzky.	Assist. Ganges Steam Company's Office.	451 7 5	—	1,000	Mother	—			
Hook, Lieut. F. A.	73d N. I.	5,719 3 11	4 Agra Bank Shares		Towards testamentary expenses, &c.	1,071 11 1	4,000	2,800	—
Horne, Mrs. F. W.	—	4,926 – –	—	—	Creditors and legatees	54 12 6	—	—	

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Howannes, Mrs. Marian, *alias* Bebee Bailie.	- - - - -	5,530 5 –	- -	9,100	Charges, repairs to and expenses of houses.	202 9 8	- -	11,400	- - - -	- - -	Unclaimed.	—
Howard, Henry - - -	Band-master H. M. 16th Foot.	9,810 11 9	- -	- -	Creditors - - -	—						
Huet, R. H. - - -	Of Nudda - -	371 15 5	- -	- -	- ditto - - -	—						
,, Captain L. - -	French mariner -	665 10 –	27,700	- -	Next of kin - -	—						
Hughes, John - - -	Veterinary surgeon -	10,088 – 2	1,700	500	Funeral and testamentary expenses, &c.	594 7 4	5,300	5,500	—			
Hull, Major L. N. - -	16th Regt. N. I. -	10,998 1 3	- -	- -	Creditors - - -	156 13 1	- -	1,000	—			
Humphreys, Mrs. S. - -	- - - - -	2,411 8 11	- -	- -	- ditto - - -	8 13 7	- -	1,100	- - - -	- - -	Unclaimed.	
Hunt, George - - -	Of Mooltan - -	1,175 2 9	- -	- -	Towards testamentary expenses, &c.	- - -	- -	1,100	—			
							Less *Rs.* 85. 0. 6. due to the administrator.					
Hunter, William - - -	In the service of Maharajah Burdwan.	268 4 –	- -	- -	Creditors - - -	—						
,, Lieut. E. - -	24th N. I. - -	89 3 5	- -	- -	- ditto - - -	8 11 7	—	—				
Hurst, James - - -	Of Delhi - -	109 14 5	- -	- -	- ditto - - -	—						
Hutchinson, Lieut. B. M. -	Engineer - -	2,450 13 6	- -	- -	- ditto - - -	278 11 9	—	—				
Hutton, J. F. E. - - -	- ditto - - -	2,026 13 –	- -	- -	- ditto - - -	424 5 11	—	—				
Ibrahim, Issabin Mahomedbin	Horse-dealer - -	82 – –	- -	1,000	Law charges - -	—						
Irwin, Lieut. T. S. - -	Engineers - -	8,887 – 5	40 N. W. Bank Shares		Creditors - - -	462 10 11	- -	5,100	—			
Jafar, Mahomed - - -	- - - - -	508 – 5	- -	2,000	Family support - -	- - -	- -	2,000	Payable to the widow and children.	—		
							Less *Rs.* 151. 2. 7. due to the administrator.					
Jackson, George - - -	- - - - -	3,074 10 4	- -	- -	Son - - - -	—						
Jellicoe, Major A. H. - -	55th N. I. - -	4,517 5 –	- -	- -	Creditors - - -	68 6 5	—	—				
Johnson, Quartermaster Sergeant J.	Artillery - - -	776 1 10	Two Agra Bank Shares		Charges; widow -	309 13 5	- -	500	—			
Johnston, Lieut. S. G. - -	In the service of E. I. Company.	6,558 15 10	- -	- -	Next of kin - -	—						
Johnstone, Samuel - -	Mariner - - -	200 4 9	- -	- -	Towards testamentary expenses, &c.	194 6 10	—	—				
							—	—				
Jones, Ensign Thomas - -	In the service of E. I. Company.	1,059 11 6	- -	- -	Creditors - - -	56 3 1						
,, Captain W. P. - -	22d N. I. - -	8,424 2 11	- -	4,300	- ditto and legatees -	—						
			Two Calcutta Docking Company's Shares.									
,, Charles - - -	Pilot - - -	188 1 3	- -	- -	Funeral and testamentary expenses, &c.	5 15 3	—	—				
,, John - - -	Engineer - -	262 9 7	- -	- -	Widow - - -	—						
Joynt, Mrs. A. - - -	- - - - -	- - -	Two India General Steam Navigation Company's Shares.		Charges, testamentary expenses, &c.	1,653 8 8	—	—				
Kauntz, Miss Julia - -	- - - - -	3,760 5 4	29,000	- -	To the Crown - -	18 8 1	—	—				
Keasany, M. - - -	- - - - -	- - -	- -	- -	Postages - - -	- - -	*Rs.* 0. 15. 0. due to the administrator.		—			

Keiller, Major D. C.	6th Regt. N. I.	17,469 7 10	2,500 3 Agra Bank Shares	27,000	Creditors	46 6 11	—	—		
Kelleher, Timothy	Police Sergeant	1,129 12 3	- - - -		Funeral and testamentary expenses, &c.	- - -	- - Less *Rs.* 161.11.10. due to the administrator.	600	Applied for the board and tuition of the son.	—
Kelly, M.	Assistant Sudder Board of Revenue, N. W. Provinces.	194 8 8	- - - -		- ditto	170 2 6	—	—		
Kemp, Henry C.	Government clerk	36 - -	- - - -		- ditto	34 8 -	—	—		
„ E. C.	Member in the firm of Messrs. Kemp, Brother & Co.	3,802 15 11	- - - -		Children	—				
„ *S/a.* W. H. Kemp, jun.	- - - -	2,864 8 2	- - - -		N. Caldwell, for boy's Advancement.	324 1 7	700	800	—	
„ E. C. Kemp, jun.	- - - -	2,919 8 6	- - - -		Charges, testamentary expenses.	367 1 8	700	1,800	—	
„ Mrs. Sarah M.	- - - -	9,853 - -	- - - -		Children	—				
Kendall, Captain B.	1st Bengal Fusiliers	4,090 9 8	- - - -		Creditors	555 7 8	—	—		
Kent, Lieut.-colonel R.	18th N. I.	16,537 11 11	- - 3 N. W. Bank Shares 8 E. I. Railway Shares.	9,100	Children	136 10 6	- -	8,200	Payable to pensioners.	—
Kennedy, Lieut. E. S.	64th Regt. N. I.	1,514 8 3	- - - -		Towards testamentary expenses, &c.	55 13 1	1,200	—		
Kerr, John, A.	- - - -	1,000 - -	- - - -		Creditors	—				
Kidby, Charles	Denapore, merchant	558 2 9	- - - -		- ditto	339 5 -	—	—		
Kinder, G. H.	Railway Company	1,557 11 7	- - - -		- ditto, and next of kin	—				
Kneebone, Henry	Mariner	89 10 3	- - - -		- ditto	44 10 7	—	—		
Kyte, Mrs. Louisa	Undertaker	10,003 - 3	- - - -		- Husband	—				
Lacy, Captain W.	Commander of the ship "Whitby."	102 15 2	- - - -		Towards testamentary expenses, &c.	83 10 2	—	—		
Lambard, Lieut. J.	57th N. I.	3,579 12 -	- - - -		Creditors	333 2 5	—	—		
Lane, Ensign F.	25th N. I.	1,783 6 7	- - - -		- ditto; father	66 4 -	—	—		
„ Captain J. F.	Mariner	409 3 7	- - - -		- ditto	—				
Laprimandaye, Mrs. E. C.	- - - -	1,636 - -	19,900		Executor	—				
Langtry, George	Preventive Officer	122 8 -	- - - -		Creditors	12 8 11	—	—		
Leadbeater, Major W. E. B.	Invalids	8,189 7 11	- - - -		Towards testamentary expenses, &c.	4,984 5 8	- -	2,800	—	
Leigh, Willoughby	- - - -	69 4 -	- - - -		Refunded	—				
Le Vade, Mrs. Mary	- - - -	1,262 10 9	9,800	1,000	Creditors	412 5 2	9,800	1,000	—	
„ *S/a.* Charles Grant	- - - -	- - -	- - - -		Paid for his support	- - -	*Rs.* 476. 10. 8. due to the administrator.		—	
Leeson, Brevet Major Joseph	Commanding the 2d I. Cavalry.	7,315 12 -	- - - -		Creditors	672 1 11	- -	3,500	—	
Lewis, Lieut.-colonel C.	H. M. 80th Foot	19,333 6 5	- - - -		- ditto	- - -	5,200 Less *Rs.* 599. 11. 2. due to the administrator.	13,000	—	
Lindblad, J. E.	Assistant at Messrs. Ahmuty & Co.	18 4 9	- - - -		Towards testamentary expenses, &c.	—				
Lindsay, George	Civil service	2,181 8 3	55,500	14,500	Executrix	—				
„ Mrs. Catherine	- - - -	700 8 6	- -	3,600	Funeral and testamentary expenses, &c.	461 10 5	- -	3,600	—	
Lightfoot, Dr. S.	Invalids	1,305 4 1	- - - -		Creditors	—				
Lish, Mrs. Elizabeth	- - - -	167 10 6	- - - -		- ditto	—				
Littlewood, D. H.	Assistant, Calcutta Exchange.	64 9 6	- - - -		Child	—				
Llewellyn, Dr. C.	40th N. I.	25,089 8 10	1,000	22,500	Creditors and executors	192 7 -	—	—		
„ Lieut. John L.	71st Regt. N. I.	2,245 6 3	- -	- -	- ditto	453 8 3	—	—		
Lloyd, Ensign C. O.	8th N. I.	742 15 9	- -	- -	- ditto, administrator	18 8 3	—	—		
Lochner, W. C.	Civil service	3,472 2 8	- -	- -	- ditto, and next of kin	538 12 4	—	—		

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Lockhart, Major R. A. -	H. M. 80th Foot -	426 6 9	- -	9,900	Towards testamentary expenses, &c.	- - -	- - Less *Rs.* 6. 3. 0. due to the administrator.	9,900	—			
„ Ensign R. D. -	In the service of E. I. Company.	56 13 –	- -	- -	Creditor - - -	—						
Lockington, Mrs. C. - -	Of Patna - -	3,801 6 11	- -	- -	- ditto - - -	15 8 2	1.800	1,200	—			
Logan, Lieut. Thomas B. -	63d N. I. - -	1,259 11 –	- -	- -	- ditto - - -	117 11 9	—	—				
Lokenauth Ghose - - -	Of Kissennugar -	- - -	- -	3,000	Children's support -	- - -	- - Less *Rs.* 80. 3. 10. due to the administrator.	3,000	Applied for the maintenance of the children.	—		
Lowcay, W. R. W. - -	Mariner - - -	240 1 9	- -	- -	Creditors - - -	112 – 3	—	—				
Lowman, Mrs. E. - -	Of Dum Dum -	214 10 3	- -	- -	Charges, testamentary expenses.	209 11 9	—	—				
Lowrie, James - - -	Of Moulmein -	111 2 –	- -	- -	- ditto - - -	89 2 1	—	—				
Lowry, Sergeant Thomas -	- - - - -	6 10 8	100	- -	Government, under Act V. of 1851; testamentary expenses.	—						
Ludlow, Major W. A. - -	12th Bengal N. I. -	2,359 7 1	4,000	39,600	Executor - - -	- - -	4,000 Less *Rs.* 1,226. 7. 10. due to the administrator.	39,600	—			
Lukin, Lieut. John H. H. -	14th N. I. - -	476 – 4	- -	- -	Creditors - - -	189 14 8	—	—				
Lushington, George T. - -	Civil service - -	24,706 4 8	26,000	73,600	Legatees - - -	—						
Lynch, Mrs. Rose - -	Of Cooly Bazar -	1,553 12 7	2,500	- -	Funeral and testamentary expenses, &c.	175 1 8	2,500	500	- - - -	- - -	Unclaimed.	—
Macdonald, Major R. H. D. -	8th Regt. Lt. Cavalry	2,892 6 9	- -	- -	Creditors, legatees and executrix.	—						
„ Lieut. J. J. -	74th Regiment N. I.	4,076 7 10	- -	- -	Creditors; father -	34 3 11	—	—				
„ Donald - -	Government clerk -	344 – 9	- -	- -	- ditto - - -	—						
„ D. R. - -	- - - -	722 6 9	- -	- -	- ditto - - -	—						
Mace, Frederick - - -	Undertaker - -	2,834 5 4	- - 1 Bank of Bengal Share.	5,300	- ditto - - -	- - -	- - Less *Rs.* 1,617. 15. 4. due to the administrator.	14,800	Payable to the daughter.	—		
Machado, P. T. - - -	Attorney's clerk -	310 4 4	- -	- -	- ditto; legatees -	—						
Mackenzie, Colin, trustee of C. Mackenzie, jun.	- - - -	370 10 8	13,900	- -	Executors - - -	—						
„ George H. -	Of Lahore - -	627 8 –	- -	- -	Charges, testamentary expenses.	623 13 4	—	—				
Mackeson, Lieut.-colonel F. -	14th N. I. - -	1,333 7 5	- -	88,600	Creditors and executors	- - -	- - Less *Rs.* 6,224. 9. 2. due to the administrator.	91,600	Payable to the brother	—		
„ Lieut. J. A. -	33d N. I. - -	12,942 5 10	- -	- -	- ditto; family - -	- - -	- - Less *Rs.* 690. 3. 6. due to the administrator.	1,100	—			

„ P. - - -	*Deputy Collector* -	971 4 4	- -	- -	- ditto - - -	326 12 2	—	—			
Mackinnon, Miss J. - -	*Schoolmaster* - -	9,996 9 10	- -	15,000	Charges, separate accounts.	—					
„ *Personalty* account.	- - - - -	2,016 8 11	- -	15,000	Next of kin - -	307 9 5	—	—			
„ Realty account -	- - - - -	1,173 - -	- -	6,200	Heir-at-law - -	—					
Mackintosh, A. - - -	- - - - -	49 1 3	- -	- -	Creditor - - -	—					
M'Lachlan, James - -	Of Mussoorie - -	215 7 3	- -	- -	Charges, testamentary expenses.	204 13 2	—	—			
„ John - -	- - - - -	- 14 3	- -	- -	- ditto - - -	- 13 6	—	—			
Macvitie, W. G. - - -	Of Jessore - -	1,613 11 1	- -	- -	Creditors - - -	836 6 8	—	—			
„ Major W. J. - -	In the service of E. I. Company.	1,245 1 6	- -	- -	- ditto - - -	97 15 1	—	—			
Macsween, Lieut. H. D. -	Artillery - - -	2,487 10 2	- -	- -	- ditto, next of kin -	79 10 6	- -	800	—		
Maelzer, Mrs. Amelia - -	- - - - -	30 - 6	- -	- -	Towards testamentary expenses, &c.	5 8 8	—	—			
Madigan, Sergeant-major J. -	59th Regiment N. I.	1,826 7 -	- -	- -	Next of kin - -	—					
Mainwaring, Captain C. J. -	In the service of E. I. Company.	3,654 8 6	3,000	15,600	Administrator - -	—					
„ Captain J. J. -	42d Bengal Lt. N. I.	1,546 8 11	- -	- -	Charges, testamentary expenses.	- - -	1,500 Less *Rs.* 180. 8. 5. due to the administrator.	—			
Manson, Lieut. J. A. - -	Horse artillery -	2,777 - 7	- -	- -	Creditors and legatee -	—					
Malcolm, P. - - -	Of Benares - -	3,221 14 11	- -	- -	- ditto, administrator -	5 7 3	—	—			
Malchus, P. J. - - -	Merchant - -	13,186 15 10	3,500	4,200	- ditto, trustee, legatees	188 - 9	—	—			
Mallock, Lieut. R. J. - -	Bengal artillery -	2,338 6 7	- -	- -	- ditto, next of kin -	309 13 -	—	—			
Maples, William - - -	Civil service - -	5,010 3 8	- -	- -	Funeral and testamentary expenses, &c.	3,015 1 11	1,400	—			
Marcus, J. P. - - -	Indigo planter - -	6,401 5 6	34,500 2 Bonded Shares.	16,400 Warehouse	Creditors and legatees -	76 2 5	—	—			
„ Legacy to Emaumum	- - - - -	300 - -	- -	2,000	Charges, testamentary expenses.	288 10 4	- -	2,000	—		
„ *S/a.* G. T. Marcus -	- - - -	2,088 9 11	23,700	2,500	Himself - - -	—					
„ J. P. Marcus, jun. -	- - - -	1,434 3 2	10,000	3,000	Charges, testamentary expenses.	- - -	600 Less *Rs.* 292. 14. 4. due to the administrator.	13,000	Payable to legatee.	—	
Marshall, Dr. John - -	Surgeon in the Bengal establishment of E. I. Company.	- - -	- -	12,900	Charges, testamentary expenses.	- - -	- - Less *Rs.* 419. 4. due to the administrator.	12,900	—		
„ Charles J. - -	Government clerk -	430 - -	- -	- -	Administrator - -	- 15 -	—	—			
„ Captain B. - -	25th N. I. - -	482 14 4	- -	- -	Charges, testamentary expenses.	461 6 11	—	—			
Marley, Captain C. H. - -	Invalids - - -	757 10 -	- -	- -	Creditors - - -	—					
Masson, Dr. J. M. - -	N.W. Province of India	26,643 13 11	- -	- -	- ditto, next of kin -	151 2 4	- -	15,500	Payable to widow and family.	—	
Matheson, Ensign T. T. M. -	39th N. I. - -	873 7 5	- -	- -	- ditto, Government, per letter of 8 October 1852.	—					
Master, Captain G. W. -	4th Regiment of Bengal Light Cavalry.	5,121 2 9	- -	- -	- ditto; father - -	116 - 2	—	—			
Manger, Dr. Oliver - -	In the service of E. I. Company.	2,601 1 10	- -	14,000	- ditto, Military Orphan Asylum for children.	- - -	- - Less *Rs.* 11. 3. 3. due to the administrator.	500			
Matthews, J. - - -	Apothecary - -	981 15 1	- -	- -	Funeral and testamentary expenses, &c.	784 12 6	—	—			

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.		Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.				
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s. Rs. a. p.*	*Sa. Rs.* / *Co.'s Rs.*				
May, J. H.	Of Moorshedabad	- - -	- -	- -	Funeral and testamentary expenses; postage.	- - -	*Rs.* 0. 1. 0. due to the administrator.	—			
M'Cann, J. J.	Police officer	6,750 4 3	- -	4,500	Administratrix	—					
M'Evoy, Rev. J.	Chaplain	2,995 - -	- -	48,400	Executors	- - -	- - / 48,400 Less one rupee, due to the administrator.	Payable to the executors.	— —		
M'Coy, Captain	Of Moulmein	80 10 11	- -	- -	Charges, testamentary expenses.	70 12 2	— / —				
M'Auliff, Lieut. R.	Horse Artillery	2,557 2 6	- -	- -	Creditors	399 1 6	— / —				
M'Curdy, Dr. C.	50th Regiment N. I.	4,186 13 -	- -	- -	- ditto; widow	302 - 1	— / —				
M'Dowall, W.	Indigo planter	No assets	- -	- -	Charges, *Co.'s Rs.* 0. 12. 4. written off.	—					
M'Ghee, Ensign J. H.	In the service of Hon. Company.	504 - 3	- -	- -	Creditors	—					
M'Gough, James	Assistant shipwright	484 15 3	- -	- -	- ditto, representatives	—					
M'Farquhar, Major H.	40th Regiment N. I.	4,623 13 9	- -	- -	Administratrix	12 11 6	— / —				
M'Lellan, Charles	Mariner	2,693 1 6	- -	- -	Next of kin	15 2 1	— / —				
M'Gill, J. H.	Assistant surveyor	- - -	- -	- -	Charges, testamentary expenses.	- - -	*Rs.* 2. 5. 6. due to the administrator.	—			
M'Kay, William	Band-master	433 2 2	- -	- -	- ditto	422 5 7	— / —	—			
M'Kean, Captain Robert	17th Regiment N. I.	3,721 2 4	- -	- -	Creditors; widow	- - -	1,000 / 2,500 Less *Rs.* 1,661. 14. 10. due to the administrator.				
M'Dormond, Charles J.	Pilot	2,327 15 8	- -	- -	- ditto	—					
M'Manus, Sergeant L.	Artillery	861 4 11	- -	- -	Legatee	—					
M'Phail, Mrs. Ann	- - - -	171 13 8	- -	- -	Representatives	—					
M'Pherson, Ensign A. G.	18th Regt. N. I.	243 1 7	- -	- -	Creditors	180 13 9	— / —				
M'Neil, Alexander	- - - -	502 8 6	- -	- -	Next of kin	—					
Meagher, Sergeant Robert	Pensioner	1,130 7 8	- -	- -	Creditors	- - -	- - / 600 Less *Rs.* 21. 3. 9. due to the administrator.	—			
Mee, Lieut.-colonel G. A.	65th Regt. N. I.	2,380 3 7	- -	- -	- ditto	—					
Meiklejohn, H. C.	Solicitor	2,021 2 7	- -	- -	- ditto	165 4 5	— / —				
Melville, William	Painter	302 7 6	- -	- -	- ditto	—					
„ A. L.	Civil service	940 12 11	- -	- -	- ditto	25 8 6	— / —				
Michael, A. E.	Judge's clerk of Meerut.	1,556 - -	- -	- -	- ditto	4 - 9	— / —				
„ George	- - - -	13,064 1 6	- -	- -	Legatees	—					
Miles, Major F. A.	In the service of Hon. Company.	1,169 9 5	33,700	- -	Next of kin	—					
Miller, Lieut. George	40th Regt. N. I.	2,259 12 7	- -	- -	Creditors	53 13 10	- - / 2,000	—			
Mills, Edward	- - - -	69 5 4	400	- -	Government, under Act V. of 1851; testamentary expenses.	—					
Money, Lieut. A.	25th Regt. N. I.	282 15 2	- -	- -	Creditors	17 4 5	— / —				

Hero, John	Agra, merchant	19,572 13 3	—	7,100	Charges; testamentary expenses.	1,719 2 4	Rs. 106. 13. 1. due to the administrator.					
Howe, Rev. J. J.	Of Agra, missionary	1,290 4 1	—	—	Creditors	63 8 9	—	12,000				
„ Ensign H.	44th Regt. N. I.	650 2 4	3,000	500	Father	184 2 9	—	—				
„ Mrs. S.	—	—	—	—	Creditors	—	3,000	500				
„ George S.	Of Mooltan	17 8 3	—	—	Charges; postages	16 13 9	Rs. 1. 5. 9. due to the administrator.					
„ T.	Of Mooltan	—	—	—	ditto - ditto	—	—					
„ W. R.	Patrol officer	1,712 14 9	—	—	ditto; testamentary expenses.	—	—	2,400				
							Less, Rs. 892. 11. 7. due to the administrator.					
Morgan, Dr. N.	In the service of the E. I. Company.	4,249 — 7	10,000	—	ditto	1,130 13 3	—	13,200	—	—	Unclaimed.	—
„ R. H.	Coach-builder	1,621 3 6	—	—	Creditors	146 13 2	—	—				
Morison, W.	Mariner	90 3 8	—	—	ditto	—						
„ Major-Gen. Sir W., K. C. B.	Madras army	2,169 5 4	33,400	—	Executors	—						
Morris, Captain A. B.	20th N. I.	3,069 — 11	—	—	Creditors	332 9 8	—	—				
„ Henry W.	Coffee planter	3,253 14 4	75,800	26,000	Executors	—						
„ James	—	220 — —	—	4,400	ditto	—						
Morrison, Ensign C. M.	8th Regt. N. I.	1,306 13 10	—	—	Creditors	573 4 9	—	—				
„ Donald	Preventive officer	2,540 2 6	1,000	12,800	Legatees	—						
Morton, Rev. W.	—	852 2 2	—	5,900	Mrs. J. A. Roberts	13 3 11	—	—				
			10 Bengal Coal Company's Shares; 1 ditto Certificate.									
Mosley, Captain W. B.	10th Cavalry	7,450 10 5	—	—	Creditors	422 9 5	—	—				
Muir, Archibald	Of Jessore	96 6 1	—	—	Smith, Farie & Co.	—						
Murphy, Neil	Mariner	88 15 —	—	—	Charges; testamentary expenses.	79 3 7	—	—				
Murray, Lieut. B. H.	43d N. I.	876 13 9	—	—	ditto	27 9 3	—	700				
„ Captain James	9th N. I.	2,816 4 —	—	—	Administrator	52 6 7	—	—				
„ Surgeon Thomas, M.D.	—	1,509 11 6	—	—	Creditors and widow	—						
Musselbrooke, James	Of Burdwan	—	—	—	Postages	—	Rs. 0. 2. 0. due to the administrator.		—			
Napleton, Lieut.-col. T. E. A.	13th Regt. N. I.	3,962 — —	—	—	Creditors, widow	1,794 14 4	—	—				
Narainchund Seat	Kazanchee	2,215 3 1	5,200	4,500	ditto - family	108 1 —	—	—				
Nash, Major S.	4th Cavalry	18,146 8 5	—	—	ditto	103 9 3	—	1,800	—			
„ Mrs. M., *alias* Bebee Biddulph.	Of Meerut	2,233 15 6	—	5,000	ditto	441 1 8	—	3,600	—			
Neave, Robert	Civil service	5,294 8 3	—	—	Administrator, and Government, per letter of 8th October 1852.	—						
Nembhard, Lieut. E.	53d Regt. N. I.	1,292 12 3	—	—	Creditors	280 1 5	—	—				
Newall, Henry	Of Meerut	192 2 9	—	—	ditto	115 10 2	—	—				
Newman, Lieut. R. G.	38th Regt. N. I.	1,722 8 5	—	—	ditto	267 13 11	—	—				
Nicoll, James	Mariner	9,046 8 10	—	—	Charges; testamentary expenses.	187 3 2	—	8,300				
Nicolson, J. R.	Merchant	138 10 —	—	—	Creditors	6 — —	—	—				
„ Lieut. M.	23d N. I.	1,688 13 10	—	—	ditto	131 6 7	—	—				
Nightingale, Dr. M.	In the service of E. I. Company.	6,873 11 2	—	—	ditto; widow	38 5 9	—	2,200	Applied for the maintenance of the children.	—		

(continued)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.	TO WHOM PAID.	Remaining Balance, and how Invested.		Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
					In Cash.	In Securities.				
Oakes, Lieut. C. R.	45th Regt. N. I.	*Co.'s Rs. a. p.* 1,583 9 11	*Sa. Rs.* — *Co.'s Rs.* —	Towards testamentary expenses, &c.	*Co.'s Rs. a. p.* —	*Sa. Rs.* — *Co.'s Rs.* 1,500 Less *Rs.* 130. 3. 9. due to the administrator.	—			
O'Bryen, Mrs. E.	—	1,649 13 —	— —	Creditors	—	— 1,000 Less *Rs.* 36. 2. 9. due to the administrator.	—			
O'Callaghan, Thomas	Benares, merchant	—	2 India General Steam Navigation Company's Shares.	Creditors; widow	4 10 —	— —				
O'Connor, Maurice J.	Sheriffs' officer	933 1 6	— —	ditto, next of kin	—					
O'Hanlon, Patrick	Barrister	17,577 1 4	35,000 6 Bank of Bengal Shares. 10 Steam Tug Shares.	ditto, legatees	4 11 8	— —				
,, *S/a* Children of the late H. M. O'Hanlon.	—	4,696 5 9	— 20,200 3 Bank of Bengal shares.	Education, &c.	961 14 1	— 22,200 3 Bank of Bengal Shares.	Applied for the maintenance and education of the son.	—		
,, ,, Rev. W. M. O'Hanlon.	—	4,596 5 10	— 20,200 3 Bank of Bengal Shares.	Legatee	—	— 20,200 3 Bank of Bengal Shares. Less *Rs.* 2,900. 2. 1. due to the administrator.	Payable to legatee	—		
Oram, Alfred	Indigo planter	1,211 4 —	— —	Creditors	211 5 —	— —				
Orde, J. E.	Of Lahore	149 1 7	— —	Charges: postage	148 3 7	— —				
O'Connor, Sub-conductor T.	Attached to the department of Public Works.	2,116 2 2	— 1,500	Creditors	110 8 5	— 900	—			
O'Shaughnessy, Sergeant S.	2d Punjab Light Field Battery.	1,367 7 4	— —	Charges; testamentary expenses.	—	— 1,500 Less *Rs.* 314. 6. 0. due to the administrator.	—			
Oswald, Lieutenant A. J. T. E.	28th Regt. N. I.	2,987 14 7	— —	Creditors, and administratrix.	280 7 5	— —				
Ouseley, Lieut.-colonel J. R.	57th Regt. N. I.	40,492 10 9	20 E. I. Railway Company's Shares.	ditto	324 13 11	— 2,300	—			
Ovenger, H. A.	Assistant in the Foreign Department.	298 15 6	— —	Creditors	156 14 6	— —				
Owen, John	Of Moulmein	296 7 4	— —	Charges; testamentary expenses.	291 1 2	— —				
,, Dr. W. C.	M. D. of the Regt. of Loodianah.	1,239 7 10	— —	ditto	—	— 1,100 Less *Rs.* 111. 0. 2. due to the administrator.	—			

Paley, Captain W.	Artillery	6,781 9 5	4 Agra Bank Shares		Creditors; father	60 11 3	—	—		
Palmer, George H.	- - - - -	— 3 9	- -	- -	Towards testamentary expenses, &c.	—				
,, Mrs. L. A.	- - - - -	1,939 3 8	- -	- -	Executors	—				
,, Lieut. J.	45th Regiment N. I. and Adjutant in the 3d Punjab Light Infantry.	2,523 1 3	- -	- -	Father	123 11 4	—	—		
,, George	Assistant Abkarry Department.	685 6 5	- -	- -	Creditors	313 1 9	—	—		
Parker, A. W. R.	Printer and dyer	1,053 14 10	- -	- -	- ditto	154 13 —	—	—		
Patullo, Captain J.	1st Regt. of European Bengal Fusiliers.	2,300 11 1	- -	- -	- ditto	246 6 11	—	—		
Paul, Mrs. Ann	Of Howrah	85 9 9	- -	- -	Government, per letter of 8 October 1852; testamentary expenses.	—				
Payne, Mrs. Elizabeth	- - - - -	1,406 5 4	1,000	3,000	Funeral and testamentary expenses, &c.	474 7 9	- -	4,700	—	
,, Manuel	Assistant in the office of Board of C., S., and Opium.	2,330 — —	- -	- -	Creditors; sons' schooling	- - -	Rs. 507. 9. 2. due to the administrator.			
Peach, Sergeant	- - - - -	128 7 10	- -	- -	Creditors	20 6 8	—	—		
Peake, Samuel	Riding-master	4,257 13 4	- -	- -	Family	60 13 10	- -	2,300	Payable to the widow	—
,, Thomas	Riding-master	838 — 8	- -	1,500	Legatee	—	—	—		
Pearle, James	- - - - -	162 10 4	- -	- -	Creditors	—	—	—		
Pearson, R. K.	Umbella, merchant	9,852 3 5	- -	- -	- ditto, and legatee	38 10 8	—	—		
,, Mrs. M. L.	Widow	625 1 4	- -	3,100	Children's expenses	384 15 4	- -	3,100	—	
,, Lieut. H. B.	56th N. I.	1,846 5 3	- -	- -	Creditors, and father	—				
Peckett, Colonel James	Engineer	11,241 12 5	25,000	10,000	Administrator	—				
Pedderick, Henry	Seaman	26 7 6	- -	- -	Charges, testamentary expenses.	19 6 11	—	—		
Peel, Lieut. J.	37th N. I.	4,885 — 9	- -	-	Creditors, and father	45 — 7	—	—		
Penrice, Captain George	Artillery	1,182 14 7	- -	-	- ditto, and mother	—				
Pennington, Captain R. C.	11th N. I.	5,500 6 1	- -	- -	- ditto, and next of kin	24 2 11	—	—		
Perry, Henry	- - - - -	1,413 5 9	- -	- -	- ditto, legatee	—				
,, Mrs. Mary	Widow of Jas. Perry	1,034 9 5	- -	800	Children	12 5 11	—	—		
,, Legacy for Rose Perry	- - - - -	582 11 —	- -	500	Legatee	- - -	500 Less Rs. 73. 12. 9. due to the administrator.	500	Applied for the education and maintenance of the daughter.	—
,, James and F. Perry	- - - - -	16 — —	- -	800	- ditto	- - -	- - Less Rs. 209. 14. 4. due to the administrator.	800	Ditto, ditto, of the sons.	—
,, James	Riding-master	1,730 4 7	- -	- -	- ditto	—				
,, Ensign, C. H.	H. M. 24th Regt.	187 8 —	- -	- -	Charges; testamentary expenses.	183 8 4	—	—		
Peters, Captain C. E.	Mariner	3,059 8 —	- -	- -	Creditors	149 2 2	- -	1,000	Payable to the widow	—
,, Fife-major Thomas	6th Regt. N. I.	884 6 5	- -	1,000	Towards testamentary expenses, &c.	1,230 9 —	—	—		
Pereira, A.	Government clerk	29 — —	- -	- -	- ditto	24 4 10	—	—		
Pettet, Captain Francis	Mariner	2,340 8 5	- -	- -	Creditors	655 1 6	- -	1,500	—	
Petruse, M.	River merchant	759 13 4	- -	2,000	Next of kin	—				

(continued)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Pew, Colonel P. L.	Artillery	14,931 1 10	—	—	Creditors	977 8 10	—	13,200	—			
Pfefferbloom, J.	Of Bassein	90 8 9	—	—	Charges; postages	90 6 9	—	—				
Pickance, B.	Assistant, Ganges Steam Office.	65 4 —	—	—	Creditors	—						
Pike, Captain N.	Mariner	12,035 — —	—	—	ditto	15 15 10	—	—				
Pilcher, Private C. P.	3d Dragoons	55 13 2	—	—	Charges; testamentary expenses.	27 6 5	—	—				
Pinto, Francis Da	Assistant in the Registry Office of Supreme Court.	53 2 —	—	—	ditto	37 9 7	—	—				
Pitcaithly, Rev. L.	Schoolmaster	1,958 10 1	—	—	Creditors	176 15 11	—	—				
Playfair, Lieutenant H. A.	52d Regt. N. I.	1,810 3 6	—	—	ditto	112 8 2	—	—				
Plowden, A. W. C.	Civil service	17,645 4 4	—	—	ditto	1,019 14 4	—	6,500	—			
Plum, Captain E. C.	Mariner	1,604 5 8	—	6,000	ditto	66 9 9	—	6,100	Payable to legatee	—		
Poole, George H. M.	Government clerk	12,128 2 9	—	—	ditto	783 3 3	—	—				
Poynton, William	Penang, mariner	343 2 8	—	—	Funeral and testamentary expenses, &c.	181 8 10	—	—				
Pratt, John N.	Merchant's clerk	767 13 5	—	—	Creditors	191 3 1	—	—				
Price, Joseph	Of Monmouth	596 4 1	—	—	Towards testamentary expenses, &c.	356 1 —	—	—				
Prichard, John	Mariner	1,261 5 —	—	—	Creditors, and mother	10 11 4	—	—				
Prosser, John	Indigo planter	2,464 5 4	—	—	Funeral and testamentary expenses, &c.	471 10 5	—	1,700	—			
Quayle, Lieut. William F.	Artillery	1,977 14 4	—	—	Creditors, and father	63 13 7	—	—				
Raggett, William	Shipwright	155 12 3	—	—	Government, per letter of 8 October 1852; testamentary expenses.	—						
Ramaswanney, Vellore	Hindoo inhabitant of Kumptee.	4,080 — —	6,000	—	Next of kin	—						
Ramsay, Robert	—	No assets	—	—	Charges; *Rs.* 2. 14. 5, debited to the administrator general.	—						
Randolph, H.	Of Chittagong, zemindar	26,859 8 11	—	1,000	Creditors	647 3 9	7,300	12,600	—			
Raper, General F. V.	1st Regt. N. I.	3,635 — —	—	14,000	ditto, and executor	—						
			3 Bank Shares.	of Bengal								
Reband, Mrs. Mary	—	477 12 —	—	—	Charges; testamentary expenses.	456 4 7	—	—				
Read, Charles	Of Howrah	6,048 4 2	—	7,000	Widow	258 10 9	—	12,000	Payable to the executor of the estate of Eleanor Read.	—	—	Notice not to pay.
Reddie, John	Judge of Small Cause Court.	24,663 14 —	—	4,500	Law charges and creditors.	—	—	20,600	—	—	—	Suits pending.
							Less *Rs.* 1,751. 9. 5, due to the administrator.					
Regelly, Vincent	—	3,203 9 —	—	—	Creditors	274 5 1	—	—	—	—	Unclaimed	—
Reid, Sub-conductor C. R.	Ordnance Commissariat Department.	187 8 —	—	1,500	Charges: Testamentary expenses.	1,556 3 2	—	—				
,, Captain H. A.	Invalid	6,272 15 4	—	—	Creditors	4 5 8	—	5,000	Payable to the widow	—		

Rees, Captain C. M.	65th Regt. N. I.	4,571 13 9	- -	- -	Creditor, and executrix	2 1 5	—	—		
Reilly, Conductor E.	Ordnance Department	5,654 11 1	- -	2,000	Legatee	28 2 8	- -	2,700	Payable to the widow	—
„ Legacy T. Reilly		56 3 —	- -	3,800	Charges, mother for son		- -	3,800	Payable to legatee	—
							Less *Rs.* 23. 9. 8. due to the administrator.			
Remmington, Lieut. J. C.	18th N. I.	1,120 14 11	- -	- -	- ditto, testamentary expenses.		- -	900	—	
							Less *Rs.* 20. 5. 4. due to the administrator.			
Repton, Captain W. W.	56th N. I., and Commandant of Sheik Light Infantry.	2,089 1 10	- -	- -	Creditors		800	1,000	—	
							Less *Rs.* 5. 13. 3. due to the administrator.			
Revell, Captain John R.	Invalids	63 8 10	- -	- -	Charges, testamentary expenses.	—				
Reynolds, Mrs. Ann		2,081 4 6	1,000	1,500	Husband	—				
„ Captain Charles S.	49th Regt. N. I.	1,541 — —	- -	- -	Creditors			*Rs.* 95. 0. 5. due to the administrator.	—	
Rich, Brig.-general R.	6th Regt. N. I.	14,734 5 6	1 Simla Bank Share		- ditto	168 3 1	—	—		
Richardson, James	Master pilot of the E. I. Company.	No assets	- -	- -	Charges, *Rs.* 3. 5. 7. debited the Administrator-general.	—				
„ D.	Deputy magistrate	425 — —	- -	- -	Creditors	—				
Rideout, Lieut. Henry F.	47th Regt. N. I.	1,967 7 9	- -	- -	Creditors, and father	—				
Ridsdale, William	Printer	473 3 5	- -	- -	Widow	—				
Robertson, Lieut. G.	37th N. I.	820 12 5	- -	- -	Creditors	83 3 1	—	—		
„ James	Assistant in the service of the proprietor of Albion Dorke at Salkeah.	880 — 6	- -	- -	- ditto, and next of kin	—				
Robinson, Ensign F. W.	56th N. I.	2,190 7 8	- -	- -	- ditto, and father	—				
„ E. K.	Sugar planter	- - -	- -	- -	Postages			*Rs.* 0. 2. 0. due to the administrator.	—	
Robson, J. S.	Railway Company	1,051 7 6	- -	- -	Charges, testamentary expenses.	210 13 2	- -	700	—	
Rodrigues, Mrs. Catherine		1,486 4 —	- -	- -	Creditors	260 4 6	- -	1,000	—	
Rogers, Dr. R. C.	Medical practitioner	873 14 3	- -	- -	- ditto	53 10 11	—	—		
Romaine, Mrs. Eliza	Boarding-house keeper	1,366 4 7	- -	- -	Husband	—				
Ross, Capt. W. H.	30th N. I.	4,680 7 1	2,000	- -	Creditors, and legatee	11 14 4	—	—		
„ Lieut.-colonel C. G.	73d Regt. N. I.	675 7 6	1,000	16,000	Executrix	4 10 4	—	—		
Ruspini, Rev. W. O.	Junior president chaplain and junior chaplain of St. Paul's Cathedral.	19,983 — 2	- -	- -	Creditors		- -	2,800	—	
							Less *Rs.* 96. 0. 7. due to the administrator.			
Russell, William	Sugar merchant	14,347 10 10	- -	- -	Administrator	28 14 5	—	—		
Ryan, E. B.	Solicitor	2,461 10 7	- -	- -	Creditors	49 11 10	—	—		
„ Quartermaster-sergeant Henry.	4th Batt. Artillery	594 5 8	500	- -	Legatee	—				
Ryder, T. E.	Government clerk	145 7 —	- -	- -	Government, per letter of 8 October 1852; testamentary expenses.	—				
Sahib Alli Kkan	Service of the Newab of Moorshedabad.	6,575 13 10	- -	- -	Towards testamentary expenses, &c.	973 3 1	- -	5,000	- - - - - -	Unclaimed. —
Salter, C. H.	Government clerk	6,581 6 9	- -	- -	Creditors	373 7 8	- -	4,500	Applied for the support and education of the daughters.	—
Salt, J.	Of Moulmein	74 15 4	- -	- -	Charges, testamentary expenses.	53 7 11	—	—		
Sander, F. P.	Printer	19,301 6 5	- -	2,000	Adminstratrix	954 15 7	—	—		
Sanderson, Alexander	Wine merchant	999 12 6	- -	- -	Creditors	507 2 3	—	—		

(*continued*)

No 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Sandford, Ensign D. A.	2d European Regt.	880 15 6	- -	- -	Creditors	118 7 1	—	—				
Sale, Lieut.-Col. Henry P.	13th Regt. N. I., Adjutant Mussooree battalion.	1,158 15 2	- -	- -	- ditto	498 13 4	—	—				
Sandham, B. L.	-	1,504 6 9	16,000	24,000	Executor	—						
Sargant, Captain Richard	Mariner	332 12 6	- -	- -	Creditors and Government, per letter, 8 October 1852.	—						
Saunders, Thos.	Trader	514 9 4	- -	- -	- *ditto*, and widow	3 - -	—	—				
Savigney, Alfred	Schoolmaster	733 8 1	- -	- -	- ditto	218 14 2	—	—				
Scarlett, Robert	-	371 3 5	- -	- -	- ditto	22 10 6	—	—				
Scott, T. C.	Civil service	12,253 11 9	26,200 1½ Bank Share.	69,200 of Bengal	Next of *kin*	—						
„ *Sa* late Major J. A. Scott.	-	3,629 - 1	4,000	12,000	Creditors, and next of kin.	233 10 3	- -	3,200	—			
„ Major J.	55th Regt. N. I.	2,555 10 -	- -	- -	- ditto	397 3 10	—	—				
„ J. B.	Broker	- No assets -	- -	- -	Charges, *Rs.*0. 10. 4., carried to Administrator-general's debit.	—						
„ Lieut. W. A.	59th *N. I.*	4,023 10 8	- -	- -	Creditors	555 8 4	- -	2,800	—			
Scowcroft, Captain Thos.	Mariner	1,070 14 5	- -	- -	- ditto, and next of kin.	98 4 6	—	—				
Seitz, J. D.	French sugar-boiler	147 14 7	- -	- -	French Consul	—						
Senior, Sergeant-Major S. M.	Pensioner	117 8 2	- -	- -	Charges, testamentary expenses.	112 2 8	—	—				
Seton, Sir Henry W.	Prime Judge, Supreme Court.	41,545 15 10	- -	- -	Executors	—						
„ Lady Lydia	-	3,894 11 8	1,04,200	- -	- ditto	—						
Sexton, Quartermr-Sergt. W.	5th Punjab Infantry	1,024 15 4	- -	- -	Creditors, and widow	1 - 7	—	—				
Serrao, Anthony	Musician	1,251 1 4	- -	- -	Charges, testamentary expenses.	228 3 -	- -	800	—			
Sharpe, Lieut. Edmund	Artillery	1,533 1 6	- -	- -	Creditors	542 7 6	—	—				
Shave, J. T.	Moonsiff	2,324 11 4	- -	- -	Charges, testamentary expenses.	- - -	- -	2,000	—			
							Less, *Rs.*137. 2. 3. due to the administrator.					
Shaw, Captain Duncan	Mariner	282 1 8	- -	- -	- ditto	271 15 9	—	—				
Sheehan, J.	Band-master	257 7 2	- -	- -	Creditors	66 - 11	—	—				
Shepherd, Lieut. A. M.	6th Cavalry	1,403 - 4	- -	- -	- ditto	112 9 10	—	—				
Sibley, Lieut. J.	54*th* Regt. N. I.	300 15 4	- -	- -	- ditto	—						
Simaes, William D.	-	401 7 4	- -	- -	- ditto	228 5 10	—	—				

Siddon, Captain W. Y.	63d Regt. N. I.	6,238 4 3	- -	- -	Ditto	251 8 6	- -	1,500	—			
Simons, A. M.	Broker	3,801 – 1	- -	- -	Charges, testamentary expenses.	115 10 2	700	2,200	—			
Sinclair, William	Schoolmaster	5,355 9 7	- -	- -	Creditors	12 2 4	—	—				
„ James	Oriental Bank	6,935 9 10	- -	- -	Ditto	79 1 7	—	—				
Sitwell, Ensign W. H.	31st N. I.	2,022 1 –	- -	- -	Ditto, and brother	44 6 2	—	—				
Skane, G.	Mariner	197 – 10	- -	- -	- - - -	197 – 10	—	—				
Skinner, William	of Punjab	4,068 1 6	6 Simla Bank Shares		Creditors	72 1 2	- -	3,200	Applied for the maintenance of the widow and children.	—		
Small, A.	Shopkeeper	1,311 15 1	- -	- -	Creditors	107 – 7	—	—				
Smelt, Henry	Solicitor	12,409 4 7	2,000	500	Ditto	515 14 6	—	—				
Smith, Captain Llewelyn	Artillery	6,840 6 9	- -	- -	Administrator	—						
„ Lieut.-colonel J. B.	60th Regt. N. I.	19,500 3 –	- -	6,000	Creditors and next of kin.	—						
„ Gunner W.	Artillery	295 – 7	- -	500	Legatees	4 15 –	—	—				
„ Robert	Broker	177 1 3	- -	- -	Government, per letter of 8th October 1852; testamentary expenses.	—						
„ Richard	Government pensioner	1,200 13 –	- -	- -	Creditors	—						
„ C. W.	Ditto	348 5 4	- -	- -	Ditto	—						
„ H. J.	- - - -	15,000 – –	- -	- -	Ditto	- - -	- - Less *Rs.* 2,307. 5. 5., due to the administrator.	4,000	—			
Smyth, Major W. M.	Engineer	- 12 11	- -	- -	Charges, *C.Rs.*83. 14. 11. debited Administrator-general. No assets.	—						
Sneed, H. J.	Pilot	984 6 5	- -	- -	Creditors, and father	8 7 6	—	—				
Sneyd, Captain, C. M.	27th Regt. N. I.	5,955 4 5	- -	- -	Mother	—						
Snook, Major, J. W.	23d N. I.	679 – 1	- -	- -	Charges, testamentary expenses.	671 9 11	—	—				
Spence, Robert	Of Tirhoot	786 14 1	- -	- -	Creditors	649 13 11	—	—				
Spiller, Mrs. Louisa	Of Seerampore	426 4 –	- -	- -	Ditto	91 15 –	—	—				
Sprot, Lieut. G. H.	2d Bengal Regt. of Europeans, in the service of E. I. C.	2,963 9 7	- -	- -	Ditto	287 13 –	—	—				
Stanford & Morison	Shipwrights	3,327 2 9	- -	- -	Ditto	—						
Staples, Lieut. Thomas	1st E. B. Fusiliers	264 9 11	- -	- -	Ditto	—						
Stafford, Mrs. H.	- - - -	3,783 7 11	2,22,558	- -	Legatees and executor	- - -	1,29,958 Less *Rs.* 8,927. 3. 11, due to the administrator.	18,200	—			
„ *S/a* Miss E. Stafford	- - - -	- - -	- -	40,000	Charges, testamentary expenses.	- - -	- - Less *Rs.* 928. 8. 11., due to the administrator.	40,000	Payable to Legatee.	—		
Steele, Thomas	Barrister	4,601 7 8	- -	- -	Creditors and mother	—						
Steer, Captain S. H.	56th Regt. of Bengal	165 13 4	- -	- -	Ditto	—						
Stephens, James	- - - -	300 – –	- -	- -	Charges, testamentary expenses.	107 4 10	—	—				
Stevenson, James	Government clerk	20 2 6	- -	- -	Ditto	—						

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued*.

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Stewart, Lieut. W.	20th Regt. N. I.	2,425 4 5	—	—	Creditors	100 7 2	—	—				
—— Sergeant James	Invalids	1,861 13 1	—	3,000	Ditto	464 9 5	—	4,000	—			
St. John, Lieut. Hon. S. M.	4th Cavalry	798 5 10	—	—	Ditto	537 8 9	—	—				
Stott, Dr. Thomas	53d N. I.	8,814 13 11	—	—	Next of kin	—						
Stones, Lieutenant A.	57th Regt. N. I.	1,247 15 2	—	—	Creditors, and father	12 1 9	—	—				
Storrs, Ensign John	Unattached	903 14 2	—	—	Legatee	—						
Struthers, Major W.	14th N. I.	1,769 6 5	—	—	Creditors	—	—	500 Less 4 *a.* 9 *p.*, due to the administrator.	—			
Stubenvoll, Annie M. Von.	—	5,876 4 5	—	—	Legatee	—						
Stuart, Dr. A. M'D.	24th Regt. N. I.	1,159 10 6	—	—	Creditors	720 9 4	—	—				
Sturt, R. R.	Civil service	250 — —	—	—	Ditto	121 10 —	—	—				
Sully, Mrs. Eliza	Portrait painter	213 6 5	—	1,500	Ditto	—						
Sutherland, Colonel J.	Service of East India Company.	53,806 15 10	186 Agra Bank Shares; 232 United Service Life Insurance Shares.		Ditto	691 6 11	500	63,000	—			
Sutton, Ensign Charles	64th Regt. N. I.	1,060 8 9	—	—	Ditto, next of kin	12 — 6	—	—				
Swinley, Mrs. Anne	—	911 7 6	—	—	Legatees	233 10 11	—	—				
Symons, Dr. John S. C.	Regt. of Ferozepore	1,549 14 8	—	—	Creditors	267 11 2	—	—				
Tabor, Captain S. J.	7th Cavalry	7,525 14 5	5 East India Railway Shares.		Ditto	4,472 2 3	5 East India Railway Shares.		—			
Tait, Captain Thomas	Mariner	983 13 7	600	1,100	Ditto, next of kin	55 10 11	—	—				
„ Dr. D.	H. M.'s 80th Regt.	412 15 2	—	—	Charges, testamentary expenses.	308 4 11	—	—				
Talbot, Major J. R.	Invalids	1,222 6 8	—	—	Creditors	—	—	1,000 Less *Rs.* 1,068. 8. 6., due to the administrator.	—			
Tallan, Lieutenant William	57th Regt. N. I.	1,174 6 4	—	—	Ditto	804 12 10	—	—				
Tapp, D. W.	Deputy Collector	1,310 9 7	—	—	Creditors	—	—	1,000 Less *Rs.* 136. 10. 4., due to the administrator.	—			
Tarrakissen, Bonerjee	—	1,215 4 9	—	—	Ditto	—	—	900 Less *Rs.* 788. 15. 8., due to the administrator.	—			
Tate, R. K.	Provisioner	48 2 3	—	—	Charges, testamentary expenses.	15 6 9	—	—				
Tatham, Robert	—	424 14 7	—	—	Creditors	72 7 2	—	—				
Tatlock, Dr. W.	Uncovenanted Civil Assistant Surgeon.	3,231 12 9	—	6,000	Ditto	1,308 11 8	—	7,400	—			
Taylor, Lieutenant R. B.	13th Regt. B. N. I.	492 1 6	—	—	Ditto	—						
„ Lieutenant R. C.	48th N. I.	1,548 2 1	—	—	Ditto, admistratrix	—						
„ William	Tailor	225 11 9	—	—	Charges, testamentary expenses.	70 12 10	—	—				

Thomas, William	-	-	475 14 5	500	1,600	Administrator - -	—		
„ Wm. B.	-	Tavern-keeper -	3,496 - 1	- -	- -	Creditors and family expenses.	- - -	- - 1,100 Less *Rs.* 36. 1. 10., due to the administrator.	Applied for board and education of the daughter.
„ John	-	Ship-builder -	2,237 1 -	9,000	- -	Ditto - - - -	—		
„ George	-	Of Lahore -	78 5 6	- -	- -	Postages - - -	77 - 6	— —	
Thomson, Lieut.-colonel Geo.		40th Regt. N. I. -	10,459 5 4	- -	- -	Creditors - - -	164 2 5	2,500 7,200	—
„ Dr. Sir James	-	Service of the E. I. Company.	20,704 6 7	6,900	31,600	Ditto, executor - -	- - -	10,400 46,700 Less *Rs.* 8,747. 10. 9. due to the administrator.	—
Thompson, Lieut. James	-	Artillery - - -	1,000 14 3	- -	- -	Ditto - - - -	403 7 5	— —	
„ Captain James	-	19th Regt. N. I. -	2,593 8 1	- -	- -	Ditto - - - -	159 - -	— —	
„ William	-	Solicitor - - -	157 12 -	- -	- -	Charges, testamentary expenses.	154 15 -	— —	
„ James	-	Of Jessore - -	- - -	- -	- -	Postages - - -	- - -	1 *a.* due to the administrator.	—
Thorburn, W. C.	- - -	Sub-assistant surveyor.	132 - -	- -	- -	Creditors - - -	16 10 8	— —	
Thorpe, John	- - -	Riding-master - -	233 3 4	- -	- -	Ditto - - - -	—		
Tidcombe, Lieut. T.	- -	42d Regt. N. I. -	2,120 7 7	- -	- -	Ditto - - - -	- - -	- - 2,000 Less *Rs.* 163. 11. 4., due to the administrator.	—
Torrens, Henry W.	- -	Civil service - -	15,788 12 6	- -	- -	Ditto, family - -	273 6 2	5,000 5,000	—
Tosh, James	- - -	Builder - - -	1,715 - -	4,200	28,900	Legatees - - -	—		
„ Legacy, Mrs. M. Vortoring.		- - - -	1,095 - -	- -	10,000	Charges, testamentary expenses.	36 12 8	- - 10,000	Payable to Legatee -
„ *S/a* Eliza Mary Tosh	-	- - - -	979 3 10	1,400	5,000	Education . - -	337 6 6	- - 6,500	- ditto.
„ J. Tosh, jun.	- -	- - - -	954 3 10	1,400	5,000	Ditto - - - -	246 14 5	- - 6,500	- ditto.
„ Louisa Tosh	- -	- - - -	1,019 - 3	1,400	5,000	Ditto - - - -	586 2 6	- - 6,500	- ditto.
Tredgold, Thomas	- -	Government service	1,215 6 1	- -	1,500	Funeral and testamentary expenses, &c.	596 6 -	- - 1,500	—
Trimmer, Major Francis	-	50th Regt. N. I. -	1,749 18 9	- -	- -	Creditors, widow -	46 - -	— —	
Travers, Ensign J. O.	- -	54th N. I. - -	637 7 9	- -	- -	Ditto - - - -	88 12 4	— —	
Treston, Mrs. E.	- - -	Of Dayrah Doom -	8,708 1 9	- -	2,000	Next of kin - -	3 - 9	— —	
				31 Delhi } 46 Agra } 50 W. S.	Bank Shares. Life Insurance Company's Shares.				
Troup, Major Wm. A.	- -	15th Regt. N. I. -	2,925 12 4	- -	- -	Creditors - - -	150 12 8	— —	
Trood, Charles	- - -	Of Lahore - -	15,190 10 1	- -	- -	Ditto, next of kin -	- - -	11,100 2,600 Less *Rs.* 1,053. 10. 1., due to the administrator.	Applied for the support and maintenance of the deceased's sister.
Tronson, E.	- - -	Government clerk -	643 12 -	- -	- -	Creditors - - -	284 2 3	— —	
Trueman, Sergeant	- -	Of Gazeepore - -	45 - 6	- -	- -	Charges, testamentary expenses.	22 15 9	— —	
Tullock, Lieut. C. B.	- -	12th Regt. N. I. -	1,838 6 4	- -	- -	Creditors, father -	176 12 2	— —	
Turnbull, W. H.	- - -	Sub-assistant surveyor.	969 1 2	- -	- -	Charges, testamentary expenses.	- - -	- - 1,000 Less *Rs.* 65. 12. 4., due to the administrator.	—

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued.*

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
Turner, Edward		2,260 4 —	—	—	Son	—						
„ Mrs. Ann		778 5 4	—	—	Creditors	281 15 1	—	—				
„ Mrs. F.		610 9 11	4,100	—	Creditors, next of kin	4 3 —	—	—				
Turner, Captain J.	51st Regt., N. I.	13,153 4 8	—	2,000	Creditors	—	500	—				
							Less *Rs.* 146. 11. 11., due to the Administrator.					
„ William	Hardware shopkeeper	8,429 12 5	9,700	1,000	Ditto, trustees, legatee	—	1,000	5,600	—			
							Less *Rs.* 1,319. 14. 6., due to the administrator.					
Twentyman, H. P.	Of Moalmein	42 3 2	—	—	Charges, testamentary expenses.	15 4 4	—	—				
Tyler, Conductor S.		633 3 3	1 Delhi Bank Share		Creditors	104 10 9	—	500	—			
Van Gricken, Paul	Assistant Mess. Braddon & Co.	779 12 9	—	—	Ditto	4 7 5	—	—				
Vanrenen, Lieut. A. J.	Service of Honourable Company.	2,532 6 4	—	—	Ditto	127 7 2	—	500	—			
Vans, Agnew P. A.	Civil service	401 8 —	—	—	Ditto	324 3 7	—	—				
Vauqulin, John	Stable-keeper	9,451 1 10	—	—	Ditto, legatees	108 12 8	—	3,000	—			
Veal, Dr. William	Service of E. I. Company.	4,550 13 5	—	—	Ditto	—	—	2,000	—			
							Less *Rs.* 350. 5. 9., due to the administrator.					
Verlie, Jean X.		737 12 1	—	—	Charges, testamentary expenses.	52 2 8	—	500	—			
Wade, Miss E. M.		—	31,500	—	Next of kin	5 4 —	—	—				
„ James	Branch pilot	3,093 4 5	—	—	Funeral and testamentary expenses, &c.	147 10 11	—	2,600	—			
Wainwright, Sergt.-major E.	Loodianah Regt.	745 6 6	—	500	Widow and children	—						
Warde, Lieut. Wm. W.	56th N. I.	1,710 15 —	—	—	Creditors	441 7 4	—	—				
„ T. C. B.	Railway Contractor	2,530 9 11	—	—	Ditto	344 3 —	—	—				
Waller, Mrs. Sophia M.	Of Lucknow	1,718 14 5	—	11,400	The Crown	—						
Wallis, William	Tailor	10,786 13 8	1,07,000	87,400	Creditors and legatees	—						
„ *S'a* Mrs. F. Wallis	Widow	2,486 14 4	26,600	15,600	Herself	—						
Life Interest, Mrs. A. Preston.		3,773 10 10	26,600	15,600	Charges, testamentary expenses.	536 8 —	28,200	15,600	Payable to legatee.	—		
„ Mrs. L. Tweedie		3,630 11 11	26,600	15,600	Ditto - ditto	530 10 9	28,200	15,600	- Ditto.	—		
„ John Wallis		3,253 6 7	26,600	15,600	Ditto - ditto	—	28,200	15,600	- Ditto.	—		
							Less, *Rs.* 337. 5. 3., due to the administrator.					
„ Legacy, Wm. Jas. Ross.		2,032 8 —	—	13,000	Ditto - ditto	2,326 4 1	—	13,000	- Ditto.	—		

Walker, Lieut. R. J.	-	2,063 5 7	- -	1,000	Creditors, next of kin, and Government, per letter of 8th October 1852.	—				
Wallace, Lieut. F.	Invalids	140 1 —	- -	- -	Charges; testamentary expenses.	108 14 11	—	—		
Walsh, Corporal John	-	3 4 6	- -	- -	Ditto.	—				
„ Pension, Sergeant J.	Pensioner	578 14 —	- -	500	Ditto	453 1 10	- -	500	—	
Warne, Captain G. F.	Mariner	1,151 5 11	- -	- -	Creditors	78 5 6	—			
Watson, J.	Assistant indigo planter.	- - -	- -	- -	Postages	- - -	6*a.* due to the Administrator.		—	
„ Lieut. H.	17th N. I.	1,996 11 —	10 North Western Bank Shares.		Creditors.	—				
„ Dr. W.	Service of E. I. Company.	22,319 4 2	54 Agra Bank Shares, 52 W. S. Life Insurance Shares.		Ditto, legatees	275 7 7	—	—		
Weaver, John	Undertaker	13,676 12 5	- -	- -	Ditto	- - -	- -	4,000 Less *Rs.* 1,280. 1. 3. due to the Administrator.	—	
„ Mrs. Emily A. L. M.	Widow	281 11 6	- -	- -	Ditto.	—				
Weafer, Pension Sergeant P.	Assistant overseer	753 15 9	- -	500	Next of kin	4 - 4	—			
Wealins, James	Of Hooghly	511 6 5	- -	- -	Charges, testamentary expenses.	426 - -	—			
Webb, Edward	Assistant in the Office of the Secretary to Government, N. W. Provinces.	383 6 —	- -	- -	Creditors	—				
Webster, Robert	Merchant	10,909 - -	- -	- -	Executrix.	—				
Welland, Captain W. P.	55th Regt. N. I.	1,510 6 7	18,800	- -	Executrix, Government, per letter of 8th October 1852; testamentary expenses.	—				
Wellard, John D.	Of Arracan	172 1 —	- -	- -	Towards testamentary expenses, &c.	137 1 4	- -	- -	- - - -	- - - Unclaimed. —
„ Edward	Sailor's Home	870 7 4	- -	- -	Creditors and legatee	—				
Wemyss, James	Civil service	No assets -	- -	- -	Charges, *C. Rs.* 111. 12. 6. carried to Administrator-general's debit.	—				
Wharton, Dr. E. H.	Of Bhugulpore	79 10 3	- -	- -	Widow.	—				
Whish, Major-Gen. Sir W. S., K.C.B.	6th B. F. Artillery	7,258 15 6	- -	1,25,000	Legatees	- - -	- -	1,00,000 Less *Rs.* 2,382. 15. 4. due to the administrator.	Payable to widow.	—
„ *S/a* Charlotte J. Whish		333 5 4	- -	5,000	- - - - -	99 5 6	- -	5,000	—	
„ George P. Whish		333 5 4	- -	5,000	- - - - -	99 5 6	- -	5,000	—	
„ John C. Whish		333 5 4	- -	5,000	- - - - -	99 5 6	- -	5,000	—	
„ C. B. Whish		116 10 8	- -	2,500	- - - - -	47 8 11	- -	2,500	—	
„ H. E. Whish		116 10 8	- -	2,500	- - - - -	47 8 11	- -	2,500	—	
Whistler, Captain G. H.	Invalids	842 10 6	- -	- -	Creditors	86 3 4	—	—		
White, Lieut.-col. H. J.	50th N. I.	9,354 3 9	9,500 8 Agra Bank Shares. 10 W. S. Life Insurance Shares.	- -	Family	- - -	- -	53,600 Less *Rs.* 159. 10. 11. due to the administrator.	Payable for children's education.	—

(*continued*)

No. 2.—SCHEDULE of ESTATES Administered to by the Registrar of the Supreme Court of *Calcutta*, from the 25th February 1848 to the 30th June 1854—*continued.*

NAMES OF DECEASED.	Occupation.	Amount in Cash.	Received in Securities.		TO WHOM PAID.	Remaining Balance, and how Invested.			Interest, how Disposed of.	Balance of Interest on each Estate.	If Claimed.	If under Litigation.
						In Cash.	In Securities.					
		Co.'s Rs. a. p.	*Sa. Rs.*	*Co.'s Rs.*		*Co.'s Rs. a. p.*	*Sa. Rs.*	*Co.'s Rs.*				
White, *S/a* Mrs. E. J. White	- - - -	188 14 1	3,000	22,500	Herself - - -	—						
„ G. G.	- - - -	1,438 8 -	- -	- -	Charges, testamentary expenses.	68 8 -	- -	1,200	—			
„ Ensign R. T.	- - - -	1,551 4 -	- -	- -	Father, Government, per letter of 8 Oct. 1852.	—						
West, Robert	Jockey and groom	18 - 9	- -	- -	Creditors - - -	—						
Wiesner, A. W.	Artillery	1,473 4 1	- -	- -	Legatee - - -	—						
Wigney, Lieut. C. W.	58th N. I.	1,052 - -	- -	- -	Creditors - - -	253 4 3	—	—				
Wilcox, Richard	- - - -	1,051 6 2	- -	- -	Charges, testamentary expenses.	49 2 10	- -	800	—			
Williams, Thomas	Riding-master	1,129 6 -	- -	- -	Creditors - - -	313 5 1	—	—				
„ Captain W. H.	67th Regt. N. I.	3,317 8 8	- -	3,800	Ditto - - -	898 11 -	1,400	4,600	—			
„ Lieut. C. F.	38th Regt. Light Infantry.	2,603 - 6	- -	- -	Ditto, next of kin -	—						
Wilson, Captain C. H.	32d Regt. Madras N. I.	3,550 2 3	- -	- -	Ditto, executor - -	—						
Windus, George	Of Moulmein - -	22 8 -	- -	- -	Charges, testamentary expenses.	12 12 6	—	—				
Wollaston, Chas. R.	Printer - - -	146 14 2	- -	- -	Creditors - - -	—						
Worseley, Major H. N.	74th N. I. - -	4,357 12 8	- -	- -	Ditto, son - -	- - -	- -	1,600	—			
							Less, *Rs.* 47. 4. 4., due to the administrator.					
Wray, Dr. C. W.	H. M. 87th Royal Irish Fusiliers.	197 8 2	- -	- -	Charges, testamentary expenses.	150 7 6	—	—				
Wright, George	Preventive officer	358 12 11	- -	- -	Executor - - -	—						
Young, J. W.	Assistant overseer	123 - -	- -	- -	Charges, testamentary expenses.	109 1 7	—	—				
„ Lieut. William	7th Regt. Light Cavalry.	1,177 4 11	- -	- -	Creditors - - -	99 1 5	—	—				
„ Dr. John	28th Regt. N. I.	5,586 5 7	- -	1,500	Executor - - -	78 - 9	—	—				
„ Joseph	Printer - - -	394 14 9	- -	- -	Creditor - - -	—						
„ Mrs. E.	Widow - - -	149 7 6	- -	500	Next of kin - -	4 5 -	—	—				
„ Major T.	2d N. I. - - -	2,881 11 4	- -	- -	Charges, testamentary expenses.	- - -	- -	2,800	—			
							Less, *Rs.* 386. 12. 9., due to the administrator.					
Zaida, Sarah	Widow - - -	272 11 11	- -	1,000	The Crown - -	—						

N.B.—No interest has accrued in any Estate the Assets of which are less than Rs. 500, as a smaller sum cannot be invested in Government Securities. The interest which has accrued in each Estate has been added to the principal, except in those Estates in which it is stated to have been paid away. The interest which has accrued has been either added to the principal or paid away, so that there is no separate balance of interest in hand. All Estates are claimed, except where the contrary is stated. Testamentary Expenses include the Administrator's commission, the costs of obtaining letters of administration, of auditing the accounts current, and publishing the half-yearly schedules, filing account in Court, postages, and other petty charges.

— No. 3. —

ACCOUNT of all MONIES belonging to Parties to whom the REGISTRAR has Administered, and in the hands of the ACCOUNTANT-GENERAL, showing how the same is Invested, the Interest received, and how Disposed of.

	Co.'s Rs.	*a.*	*p.*
W. Aberdeen	27	5	7
R. H. Aitchison	111	6	7
John Alexander	115	1	8
James Anderson	44	3	5
Rev. Richard Arnold	262	5	4
Captain Charles Auber	14	9	10
C. P. Auslan	68	7	8
Lieutenant James Awdry	9	3	8
H. Babonan	79	3	1
Brevet-major W. Bacon	107	3	6
D. Bannerman	62	10	7
George Barron	77	14	6
Mrs. A. M. Barwell	177	8	10
J. W. Bateman	55	3	11
Kottoo Bebee	9	2	4
James Bell	6	15	5
Lieutenant-colonel D. H. Bellassis	212	–	3
W. B. Bellringers	9	12	10
Francis Bennett, late of Colgong concern	31	13	1
Mrs. Isabella Binny	12	3	10
Captain William Block	18	–	7
W. Blackburne	126	11	1
Captain B. Blake	196	9	9
Miss S. E. Boucheer, representative to the estate of Captain W. W. West	239	–	11
J. H. Brandt	228	15	2
James Breen	53	2	10
Major A. Brenan	88	9	–
Captain W. Broadfoot	89	5	6
Brigadier-general C. Brown	121	3	7
Mrs. Catherine Burgess	60	5	10
Lieutenant-colonel H. Burney	209	6	9
T. Burt	47	1	4
Thomas Burton	14	15	5
Apothecary John Byron	226	10	4
Surgeon William Cameron	26	7	9
E. Campbell	6	10	7
John Campbell	68	3	5
Lieutenant-colonel J. Campbell	192	6	6
John Canning, 1st.	208	11	2
E. E. Capes	82	1	1
J. Casement	43	12	3
Master Pilot W. W. Cearns	28	6	11
Samuel Thomas Chapman	252	8	4
Lieutenant John Clark	30	10	9
Richard Cleaver	35	7	6
G. T. Collins	387	8	10
Lieutenant W. C. P. Collinson	107	8	7
A. Colquhoun	73	14	7
Dr. T. Compton	78	4	4
Lieutenant C. G. Constable	159	5	1
John Corbett	12	9	11
Dr. John Cornick	95	6	1
Dr. J. Edge	315	9	2
Lieutenant G. C. Crispin	290	12	7
William Currie	429	11	–
F. Dallas	23	–	8
J. Dalzell	78	6	–
Dr. R. O. Davidson	31	3	3
Monsieur Charles De Bast	232	2	7
Lieutenant-colonel W. C. Denby	65	11	4
Mrs. Francis De Rozario	125	3	8
Mrs. Dickson	29	–	3
Lieutenant-colonel W. Dickson	44	8	9
Dr. H. D. Donaldson	80	5	5
Lieutenant-colonel D. Dowie	35	13	5
Honourable F. Drummond	32	5	3
Dr. W. Duff	43	2	5
William Dunlop	109	14	2
S. M. Duntze	73	5	6
Lieutenant A. L. Durie	18	5	8
Colonel G. A. D. Dyce	100	12	7
N. B. Edmonstone	175	11	3
Sir John Drummond Erskine	56	7	9
Lieutenant W. L. R. Fathful	162	3	7
Robert Cutler Fergusson	9	1	8
W. Fewell	48	3	6
Lieutenant H. FitzClarence	10	8	9
F. W. Fitzroy, Cornet	177	10	1
Lieutenant P. J. Fleming	159	7	9
Mrs. E. Foley	200	3	6
Captain W. W. Frost	58	7	5
Ensign R. G. George	19	–	11
James Gilbert	44	4	7
Dr. F. Gildars	120	1	8
Lieutenant G. W. Golding	166	–	4
Lieutenant-colonel A. Grant	161	12	1
Lieutenant-colonel Sir J. P. Grant	149	14	–
Lieutenant-colonel W. A. Grant	64	9	5
Mrs. T. A. Gregory	304	14	7
H. Hall	8	7	9
Lieutenant-colonel W. Hurper	343	3	8
Captain and Brevet-major S. Hart	28	4	7
Mrs. E. Hartley	174	13	4
Captain J. Hay (Mariner)	73	4	2
W. J. Heard	54	9	–
G. H. Henderson	111	–	11
Edward Henley	350	11	10
Lieutenant L. Hill	33	4	1
James Holgate	78	12	8
Captain S. M. Horseburgh	159	7	7
Narees Hossannah	22	11	9
R. H. Huet	167	4	3
Mr. John Hughes	43	3	7
Major J. Johnon	145	11	8
Colonel J. M. Johnson	225	14	1
Andrew Seton Karr	60	10	2
Cornet W. N. Kellett	158	3	3
D. Henderdine	18	11	4
Sergeant D. Kennedy	9	13	6
Major-general P. Le Ferri	235	1	6
Mr. James Lewis	59	7	6
Ensign R. D. Lockhart	30	15	10
Lieutenant W. Lowder	162	11	1
W. T. Mabert	153	7	11
Alexander Macdonald	46	7	2
Major R. C. Macdonald	193	9	8
Captain James M'Harg	221	4	7
Alexander Mackenzie	29	14	9
Captain George Mackenzie	12	9	2
Lieutenant G. S. Mackenzie	10	11	8
C. Mackinnon	139	2	7
A. Mackintosh	23	10	3
Captain J. Mackintosh	157	10	2
Lieutenant F. S. M'Mullen	440	3	6
Mrs. C. Madden	29	3	1
Mrs. Catherine Maghoo	9	2	9

(*continued*)

	Co.'s Rs.	a.	p.
James Mansfield	77	11	3
Gavork Manuk	479	8	10
Ensign T. T. M. Matheson	13	–	4
Captain G. Mavor	46	5	6
Dr. Charles Maxwell	7	2	4
John Middleton	77	4	1
P. S. Mitchell	114	6	10
Robert Mitford	294	–	8
Thomas Morton	7	5	8
Robert C. S. Neave	75	1	4
Assistant-surgeon C. Newton	11	10	11
Captain R. Newton	158	15	6
Major-general Sir William Nott	11	4	3
Lieutenant A. B. Ogilvey	7	11	11
Captain James Oliver	75	15	11
Surgeon J. Ovington	342	13	4
Major J. Owen	338	11	8
Charles Paterson	341	10	7
Dr. J. J. Paterson	39	12	1
Charles Pattenson	32	14	4
John Pattenson	66	8	9
Mrs. Ann Paul	55	1	7
D. Pearson	120	4	11
Mrs. Margaret Penny	44	3	2
Captain R. H. Phillips	8	7	7
Lieutenant W. T. Phipps	14	1	9
Mrs. E. C. Poner	288	–	1
Captain Pringle	159	5	8
Lieutenant A. T. Pyne	50	7	11
C. Queros	46	–	11
William Roggett	124	15	11
George Reives	13	9	5
Captain George Reid	177	–	1
Conductor D. Richmond, of Ordnance	38	8	3
Captain C. Robertson (Mariner)	14	14	1
Colonel J. Robertson	12	10	5
George Robinson	9	7	9
Captain G. M. Robinson	64	6	8
George Rogers	40	12	2
Lieutenant-colonel H. Ross	44	10	3
Assistant-surgeon J. M. Rothney	13	9	11
Ruggubally Khansumah	74	4	3
Major C. Ryder	89	2	1
T. C. Ryder	100	7	11
Captain J. Sadler	10	3	8
Lieutenant T. E. Sage	270	4	10
E. M. Sandford	14	15	6
Captain Richard Sargant	54	2	8
Captain J. Sanders	134	8	7
Dr. W. Scott	14	5	–
Sally Seagrove	25	15	4
William, *alias* W. D. Seanor	64	8	5
Lieutenant C. M. Shairp	368	15	8
Captain William Shortreed	20	1	5
J. D. M. Sinaes	23	–	2
Lieutenant-colonel E. J. Smith	427	13	8
J. T. Smith (Mariner)	198	14	2
Robert Smith	49	7	2
W. B. Smith	20	3	2
William T. Smith	75	4	3
Mrs. Mary Sparks	19	13	6
Captain R. Spence	49	15	11
Dr. T. K. Spencer	7	2	8
James Stuart	13	12	7
Captain Fredk. St. John Sturt	324	8	11
Lieutenant John L. D. Sturt	121	9	–
John Thomas	32	15	7
Major L. Thomas	400	13	3
J. O. Tod	321	1	2
Michael Torrick	114	3	3
C. W. Transcott	39	14	–
Dr. David Turnbull	362	8	10
Lieutenant C. W. Turner	172	3	10
Lieutenant E. T. Turner	159	2	–
Rev. W. Tweddle	21	7	8
Lieutenant A. F. Tytler	32	1	10
Lieutenant Lewis Vansandam	165	8	2
Francis Vrignon	32	3	10
Lieutenant R. J. Walker	130	1	5
Captain W. P. Welland	20	8	2
Captain G. E. Westmacott, 37th N. I.	8	15	6
Ensign R. T. White	14	9	11
C. Whitemore	10	4	3
E. Whittington	11	15	9
John Williams	175	10	5
Samuel Williamson	248	9	10
Lieutenant Wm. Thomas Wilson	397	3	8
Lieutenant-colonel G. Wilton	159	4	1
Captain D. P. Wood	8	3	2
A. Wright	14	5	10
R. O. Wyne	194	6	9
T. B. Wyse	86	11	1
Captain M. Young	13	14	1
Lieutenant-general H. C. Calcroft	17	9	7
W. Cormick	86	7	11
J. A. Irwin	279	14	8
W. D. Kerr	12	14	2
Mrs. Mary Ann Mahon	28	9	–
Dr. W. H. Rogers	14	2	9
Captain W. Sargent	266	10	1
Colonel B. Stewart	164	15	4
Lieutenant-colonel Arthur Ward	93	9	6
Gerald Wellesley	361	1	–
Lieutenant-colonel S. Wood	31	15	8
James Breen	30	2	7
Lieutenant-colonel J. Campbell	17	8	–
John Corbett	8	6	5
Lieutenant-colonel W. C. Danby	38	7	3
Dr. W. Duff	12	9	7
Captain W. W. Frost	12	2	9
Lieutenant G. W. Golding	33	12	–
John Middleton	19	1	–
Captain R. H. Phillips	5	14	9
Major L. Thomas	95	6	1
C. W. Truscott	25	6	4
Captain W. P. Welland	3	11	6
Captain D. P. Wood	5	12	1
A. Wright	9	8	3
T. R. Wyse	3	15	10
Co.'s Rs.	25,138	15	–

(Errors excepted.)

Fort William,
Office of Accountant-General's Department,
22 November 1854.

(signed) *Edm. Drummond,*
Officiating Accountant to the Government of Bengal.

— No. 4. —

ACCOUNT of the AMOUNTS PAID, and to whom, out of the UNCLAIMED ESTATES, in conformity with the Recommendation of the Committee on Sir *Thomas Turton*'s DEFALCATIONS.

Payments under Section 3, Act V. of 1851.

DATE.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
		Co.'s Rs.	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	
1851 : August - - S. A.	Martin Blake - - -	4,220	5	4	- - -			To Administrator-general for distribution among creditors.
	Major George Broadfoot -	12,223	5	—	- - -			Ditto - ditto.
	Major Patrick Craige - -	1,909	—	5	- - -			Ditto - ditto.
	E. V. Irwin - - -	1,118	13	9	- - -			Ditto, for payment to executrix in England.
	Henry Kellner - - -	3,460	3	7	- - -			Ditto - payment to the mother of deceased.
	Dr. J. Menzies - - -	8,833	1	9	- - -			Ditto - payment to the legatees.
	Lieut.-colonel G. H. Ralean -	591	8	—	- - -			Ditto - payment to the residuary legatee of deceased.
					22,356	5	10	
September - S. A.	Assistant-surgeon W. H. Dr. Poute.	500	2	1	- - -			Ditto - payment to Miss E. J. Tucker.
	Lieutenant John Jacob -	579	7	—	- - -			Ditto - payment to Solicitor of Her Majesty's Treasury.
	Major-general R. Patton -	388	4	1	- - -			Ditto - payment to the legatees.
	Captain George Reid - -	1,391	13	4	- - -			Ditto - payment to the next of kin.
	Conductor Henry Taffe -	7,523	15	2	- - -			Ditto - payment to the father of deceased.
	Captain H. C. Mackenly -	1,909	3	11	- - -			Ditto - distribution among creditors.
	Lieutenant T. E. Sage - -	281	7	1	- - -			Ditto - payment to sub-treasurer under Financial Secretary's letter of 8th October 1852.
	Dr. R. O. Davidson - -	85	6	9	- - -			
	Lieutenant Robert Inglis -	68	—	5	- - -			Ditto - payment to the Bengal Military Fund.
	Major-general Sir Wm. Croxton.	3,768	9	8	- - -			Ditto - payment to the assignee of the deceased.
	Charles Dubordieux - -	1,145	3	10	- - -			Ditto - payment to the legatees.
	Lieutenant F. Shuttleworth -	4,648	14	4	- - -			Ditto - payment of debts and balance to executrix in England.
	Lieutenant-colonel Edward James Smith.	26,156	8	10	- - -			Ditto - payment to the administrator in England.
	Captain H. D. Vanhomrigh -	4,177	15	9	- - -			Ditto - payment to the widow of the deceased.
	Mrs. E. Sookeas Gasper -	510	1	9	- - -			Ditto - payment to the legatees.
	Lieutenant Maresey Staples	736	14	1	- - -			Ditto - payment of debts.
	Conductor David Richmond	493	7	—	- - -			Ditto - payment to legatees and balance to sub-treasurer.
	Assist.-surgeon Wm. Pringle	852	13	6	- - -			Ditto - payment of debts.
	Lieut.-col. Wm. Henry Earle	3,286	8	2	- - -			Ditto - ditto.
	James Perry - - -	915	8	11	- - -			Ditto - payment to the legatees.
	Lieut.-col. Thomas Worseley	853	3	4	- - -			Ditto - payment of debts.
	Captain Wm. Moultrie -	2,814	13	11	- - -			Ditto - ditto.
	John Sutherland (merchant)	2,260	12	4	- - -			Ditto - payment to the legatees.
					65,349	3	3	
October - - S. B.	Wm. Johnson Heard (merchant).	8,584	—	—	- - -			Ditto - payment to the executor in England.
	Francis Patrick (master mariner).	18,508	5	11	- - -			Ditto - payment to the legatees.
	Charles Henry West, (mariner).	1,436	5	—	- - -			Ditto - payment to the son and surviving legatees.
	John Athanass - - -	7,118	2	2	- - -			Ditto - payment of stipendiary allowances under will of the deceased.
					35,646	13	1	
December - S. A.	Lieutenant W. S. Dodgson -	1,219	5	9	- - -			Ditto - payment of father and administrator in England.
	Captain R. F. Dongan -	122	15	5	- - -			Ditto - payment to the sole legatee of deceased.
	Captain Wm. Dudley - -	2,133	9	1	- - -			Ditto - payment to the father of deceased.

DATE.	NAMES OF ESTATES.		AMOUNT.	TO WHOM PAID.
		Co.'s Rs. a. p.	*Co.'s Rs. a. p.*	
1851 : December S. A.	Cachature Galastun - -	14,869 15 6	- - -	To Administrator-general for payment to the executor, estate George Lucas.
	Major John Ferrier Gleeson -	488 8 11	- - -	Ditto - payment to the administrator in England.
	Lieutenant G. T. Hamilton -	704 14 4	- - -	Ditto - payment to the father of deceased.
	Lieutenant R. Hay - -	14,354 – 4	- - -	Ditto - payment of debts.
	Edward Henley - - -	3,898 11 11	- - -	Ditto - payment to daughter and executrix in England.
	Captain R. A. Humphreys -	3,341 2 3	- - -	Ditto - payment to Dr. M'Donald.
	Paul, Rev. Lemrick - -	5,910 1 4	- - -	Ditto - payment to sundry legatees.
	Captain Frederick Mullins -	733 – 1	- - -	Ditto - payment of debts, and share of sister.
	Captain W. S. Prole - -	1,314 – –	- - -	Ditto - and balance to widow and administrator of deceased.
	Captain A. S. Singer - -	1,492 9 8	- - -	Ditto - payment to widow and executrix in England.
	Lieutenant T. Jas. Smallpage	5,278 4 3	- - -	Ditto - payment of debts and balance to legatee of deceased.
	Lieutenant-col. James Todd -	10 12 2	- - -	Ditto - payment to E. W. Blunt.
	Captain James Woodburne -	1,454 5 9	- - -	Ditto - payment to the administrator in England.
	William Gordon - - -	81 10 2	- - -	Ditto - payment to sub-treasurer under Act V. of 1851.
	William Griggs - - -	1,260 8 6	- - -	Ditto - payment to the legatees.
	Lieutenant G. S. Mackenzie -	2,076 13 7	- - -	Ditto - payment to the mother of deceased, and administrator in England.
	Captain Frederick St. J. Sturr.	268 12 11	- - -	Ditto - payment to sub-treasurer under Financial Secretary's letter of 8th October 1852.
	Lieutenant John L. D. Sturt	65 13 –	- - -	Ditto - ditto.
	Aviet Agabeg - - -	1,520 13 8	- - -	Ditto - payment to the legatees.
	Richard Ahmuty (C. S.) -	629 5 9	- - -	Ditto - payment of Becher Ahmuty's pension.
	John Fredk. Aigeldanger -	446 10 2	- - -	Ditto - payment to father of the deceased.
	Captain J. R. Aire - -	323 5 6	- - -	Ditto - payment of debts.
	Captain Richard Ponsenby Alcock.	1,691 14 10	- - -	Ditto - ditto.
	Ensign G. W. Alexander -	224 10 –	- - -	Ditto - ditto.
	Ensign W. F. Alexander -	503 3 6	- - -	Ditto - ditto.
	Lieutenant John Staples Alexander.	467 10 10	- - -	Ditto - ditto.
	Lieutenant J. G. Allardyce -	408 2 7	- - -	Ditto - ditto.
	Joseph Atteras (merchant) -	858 6 4	- - -	Ditto - ditto.
	J. R. A. Ammon - -	586 10 11	- - -	Ditto - ditto.
	Cornet Robert Anderson -	1,517 10 6	- - -	Ditto - ditto.
	Charles Anderson (indigo planter).	3,133 8 10	- - -	Ditto - balance to sister and sole next of kin.
	Wm. Andrews (overseer) -	215 12 –	- - -	Ditto - repairs of house, No. 41, Circular-road.
	Rev. R. Arnold - - -	273 7 4	- - -	Ditto - payment to sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	Carripiet Arrakil, legacy of Hossannah Nurees.	192 2 1	- -	Ditto - payment to the legatee of the deceased.
	Manuel Joshua Athanass -	6,491 2 4	- - -	Ditto - ditto.
	Clemonts Augustin, sen. -	1,350 1 6	- - -	Ditto - payment to sundry legatees.
	Lieutenant James Awdry -	20 13 9	- - -	Ditto - payment to sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	Wm. Brodie - - -	383 15 9	- - -	Ditto - payment to widow and executrix in England.
	Lieutenant-colonel L. Bruce -	8,430 7 2	- - -	Ditto - payment of debts and balance to widow.

DATE.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
		Co.'s Rs.	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	
1851: December - S. A.	W. W. Cockerell - -	211	3	3	-	-	-	To Administrator-general for payment to the son of deceased.
	Lieut.-Colonel John Craige -	2,922	9	7	-	-	-	Ditto - to administrator in England.
	Sergeant E. Dean - -	774	2	6	-	-	-	Ditto - to pay debts.
	Major-general H. Grace -	1,838	3	–	-	-	-	Ditto - payment to administrator in England.
	R. C. Halket - - -	3,631	1	3	-	-	-	Ditto - payment of debts.
	Lieut. F. W. A. Hamilton -	2,539	14	1	-	-	-	Ditto - ditto.
	Lieut. William Hooper -	480	2	6	-	-	-	Ditto - ditto.
	Captain Robert M. Hunter -	778	2	11	-	-	-	Ditto - payment to the legatees.
	John Montague Ruddock -	424	–	6	-	-	-	Ditto - payment of debts.
	Captain Wm. Shortreed -	1,343	4	1	-	-	-	Ditto - payment to administrator in England.
	T. L. N. Sturt - - -	19	6	–	-	-	-	Ditto - payment to relatives of deceased.
	Lazar Agabeg (sugar-merchant).	2,611	15	1	-	-	-	Ditto - payment to the legatees.
	R. H. Aitchison (merchant and agent).	122	8	7	-	-	-	Ditto - sub-treasurer Financial Secretary's letter, 8 October 1852.
	Lieutenant Walter Alcock -	141	7	9	-	-	-	Ditto - payment of the legatees.
	General Jean Francis Allard	1,518	–	10	-	-	-	Ditto - ditto.
	Major C. D'Oyly Aplin -	219	13	10	-	-	-	Ditto - ditto.
	Mr. B. C. Arrakil - -	224	12	11	-	-	-	Ditto - S. J. Sarkies, a creditor.
					1,10,570	10	11	
1852: January - - S. A.	S. P. Bagram - - -	-	-	-	2,337	2	5	Ditto - to derivative executor.
February - S. A. & C.	Charles Coles - - -	3,854	13	6	-	-	-	Ditto - for transfer to estate E. C. Kemp.
	Rev. Charles Ackland -	65	–	10	-	-	-	Ditto - payment of debts.
	Major Phillip Cortland Anderson.	62	3	2	-	-	-	Ditto - ditto.
	Gentloon Aviet - - -	10	13	–	-	-	-	Ditto - payment to the legatees.
	Thomas Bartlett (master pilot)	141	1	1	-	-	-	Ditto - payment of debts.
	J. R. Barwell, (C. S.) -	27	9	3	-	-	-	Ditto - payment to the legatees.
	Lieutenant D. C. T. Beatson	1,631	5	8	-	-	-	Ditto - payment of debts.
	Frederick Bedford - -	9	15	4	-	-	-	Ditto - payment to the legatees.
	Henry Wm. Benton - -	52	15	1	-	-	-	Ditto - payment of debts.
	R. L. Besnard - - -	68	6	6	-	-	-	Ditto - ditto.
	Miring Agnew Bignell, (pleader).	134	12	–	-	-	-	Ditto - ditto.
	Alexander Colvin Benny -	12	–	5	-	-	-	Ditto - payment to the legatees.
	Assistant-surgeon James Plackwood.	85	7	3	-	-	-	Ditto - payment of debts.
	Lieutenant Thomas Blayds -	531	9	6	-	-	-	Ditto - ditto.
	Captain C. H. Boisragon -	59	15	9	-	-	-	Ditto - ditto.
	J. H. Brandt (wine-merchant)	237	6	4	-	-	-	Ditto - sub-treasurer, under Financial Secretary's letter of 8 October 1852.
	George Buckland - -	614	11	4	-	-	-	Ditto - payment of debts.
	Captain John Bunce - -	1,032	1	–	-	-	-	Ditto - payment to the legatees.
	Captain C. J. F. Barnett -	2,596	3	3	-	-	-	Ditto - payment of debts.
	Captain R. L. Burnett -	209	–	10	-	-	-	Ditto - payment to the administrator in England.
	Surgeon Wm. Cameron -	141	6	5	-	-	-	Ditto - cost of administration, and balance to sub-treasurer.
	John Campbell - - -	76	10	7	-	-	-	Ditto - sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	John Canning (first account)	217	2	4	-	-	-	Ditto - ditto.
	„ „ (second ditto)	186	9	2	-	-	-	Ditto - payment to the legatees.
	Lieutenant Charles Carlyon	59	14	8	-	-	-	Ditto - payment of debts.
	Robert Cathcart - -	95	12	5	-	-	-	Ditto - ditto.
	David Clark - - -	3,914	15	6	-	-	-	Ditto - ditto.

DATE.	NAMES OF ESTATES.	———	AMOUNT.	TO WHOM PAID.
		Co.'s Rs. a. p.	*Co.'s Rs. a. p.*	
1852: February - - S. A. & C.	James Clark - - -	95 13 3	- - -	To Administrator-general for payment of debts.
	Lieutenant John Clark -	39 2 –	- - -	Ditto - sub-treasurer, under Financial Secretary's letter of 8 October 1852.
	Mrs. Emma Cock - -	2,298 13 11	- - -	Ditto - for payment to C. J. Cock, and Mrs. Sparling, late Miss Cock.
	Richard Coleman - -	492 1 5	- - -	Ditto - for payment to Landor and Morland.
	James Curtis (indigo planter)	9 14 –	- - -	Ditto - to the legatees.
	F. Dallas - - - -	31 7 11	- - -	Ditto - sub-treasurer, under Financial secretary's letter of 8 October 1852.
	Lieutenant Gordon Hugh Davidson.	1,673 5 7	- - -	Ditto - for payment of debts, and balance to father of deceased.
	Major Henry Delafosse -	1,287 3 4	- - -	Ditto - distribution among creditors.
	Captain Charles Dallas -	271 1 10	- - -	Ditto - ditto.
	Alexander Duncan - -	745 1 9	- - -	Ditto - ditto.
	Captain George Hart Dyke	1,396 7 5	- - -	Ditto - ditto, and balance to executor of deceased.
	Lieut. James Fred. Elsegood	56 6 2	- - -	Ditto - distribution among creditors.
	Richard Evans - - -	170 13 10	- - -	Ditto - payment to the legatees.
	Captain John Fisher - -	4,284 6 9	- - -	Ditto - distribution among creditors.
	Mrs. Catherine Ham - -	31 3 2	- - -	Ditto - sub-treasurer, under Financial Secretary's letter of 8 October 1852.
	Major Harry Hewet - -	98 7 –	- - -	Ditto - payment of debts, and balance to ditto, under Act V. of 1851.
	Mrs. J. C. Jones - -	838 7 4	- - -	Ditto - payment to the legatees.
	Lieutenant Thos. Tynte King	169 14 7	- - -	Ditto - ditto.
	Lieutenant John Lambert -	3,282 3 4	- - -	Ditto - payment of debts.
	Mr. James Lewis - -	71 14 10	- - -	Ditto - sub-treasurer, under Financial Secretary's letter of 8 October 1852.
	James Lewis - - -	692 3 9	- - -	Ditto - for payment to daughter of deceased.
	William Liddell (merchant) -	7,036 15 11	- - -	Ditto - payment of debts.
	M. J. Malchus - - -	978 15 5	- - -	Ditto - payment to the legatees.
	Captain John Munro - -	2,655 3 6	- - -	Ditto - payment of debts.
	Captain Charles Ralfe -	214 5 11	- - -	Ditto - payment to the legatees.
	John Stewart - - -	270 5 1	- - -	Ditto - ditto.
	Captain R. Walker - -	1,152 8 7	- - -	Ditto - payment of debts.
	James Webster - - -	748 8 11	- - -	Ditto - payment to administrator of the estate.
	Ather A. Simon White -	4,983 10 3	- - -	Ditto - payment of debts, and balance to widow of deceased.
	Brevet Captain Fred. Baker	686 4 6	- - -	Ditto - payment to the legatees.
	Charles Becher - - -	294 2 6	- - -	Ditto - payment to Palmer, France, & Co.
	John Bell (superintendent of Customs).	4 14 5	- - -	Ditto - charges for half-yearly schedule.
	Lieut. A. Cardew - -	60 1 8	- - -	Ditto - payment of debt.
	Brevet Capt. E. B. Conolley	1,898 13 10	- - -	Ditto - payment to the legatees.
	H. J. Barchard - - -	58 6 3	- - -	Ditto - payment of debts.
	Mrs. E. M. Dixon - -	269 12 –	- - -	Ditto - payment to next of kin of deceased.
	William Durie - - -	25 10 6	- - -	Ditto - payment to the legatees.
	Thomas Pickett - -	77 11 5	- - -	Ditto - payment to widow of deceased.
	Robert Fathum - - -	420 14 7	- - -	Ditto - payment of debts.
	Thomas White - - -	346 6 5	- - -	Ditto - payment to the legatees.

DATE.	NAMES OF ESTATES.	Co'sRs.	a.	p.	AMOUNT. Co'sRs.	a.	p.	TO WHOM PAID.
1852:								
February - S. A. & C.	Joseph Ter Andreans - -	3,198	4	11	-	-	-	To Administrator-general, for payment to brother and sister of deceased.
	Conductor A. H. Butlers -	747	4	10	-	-	-	Ditto - distribution among creditors.
	Lieutenant Charles Darke -	11,670	11	5	-	-	-	Ditto - payment to administrators of two estates, C. Darke, uncle and nephew of deceased.
	Lieutenant W. L. Mackeson -	237	6	5	-	-	-	Ditto - payment to brother and legatee of deceased.
	Lieutenant-colonel Anthony Pohleman,	2,943	2	3	-	-	-	Ditto - payment to next of kin of deceased.
	John Roleson - - -	815	15	11	-	-	-	Ditto - payment of debts.
	Cornet M. B. Stone - -	468	9	-	-	-	-	Ditto - payment of the legatees.
	Dn. Peter Breton - -	3,754	15	1	-	-	-	Ditto - ditto.
	L. and E. Fraser - -	270	6	7	-	-	-	Ditto - ditto.
	John Williamson Fulton -	2,423	15	7	-	-	-	Ditto - ditto.
	Miss Gole - - - -	800	3	2	-	-	-	Ditto - distribution among creditors.
	Margaret Girling - -	226	-	8	-	-	-	Ditto - ditto.
	E. Nosky - - - -	766	15	3	-	-	-	Ditto - ditto.
	Bagram Johannes Lukeas -	2,120	9	4	-	-	-	Ditto - ditto.
	J. C. C. Sutherland - -	701	6	3	-	-	-	Ditto - payment to executor of deceased.
	Mr. Thomas Yorke and Anna Yorke.	892	13	5	-	-	-	Ditto - payment to W. D. Rozario.
					32,038	12	1	
1852–53:								
May 1852 - S. A.	Thomas Blackall (deputy Collector).	156	4	11	-	-	-	Ditto - payment of debts.
	Manuel Cacho - - -	21,130	13	2	-	-	-	Ditto - payment to the legatees.
	John Carty - - -	2,981	7	9	-	-	-	Ditto - payment of debts.
	William Duncan - -	296	-	6	-	-	-	Ditto - payment to the son and mother of deceased.
	W. Forrest (indigo planter) -	231	12	3	-	-	-	Ditto - payment to mother of deceased.
	Lydia Tulton - - - -	4,787	8	2	-	-	-	Ditto - payment to the legatees.
	Mrs. M. S. Glomier - -	197	-	8	-	-	-	Ditto - payment to next of kin of deceased.
	William Gonsalves - -	139	10	7	-	-	-	Ditto - Mrs. M. A. Gonsalves, in full of J. B. Filson's claim of 300 rupees against the estate.
	Lieut.-colonel Thomas Gough	7,156	11	4	-	-	-	Ditto - payment to the legatees.
	William Greaves - -	1,286	10	7	-	-	-	Ditto - distribution among creditors.
	Lieut. Robert Trotter Knox -	1,179	15	5	-	-	-	Ditto - payment to the legatees.
	Lieutenant P. C. Lambert -	3,341	3	10	-	-	-	Ditto - payment to father of deceased, and administrator in England.
	John Lawrence - - -	35	4	3	-	-	-	Ditto - payment to Mrs. H. Preston.
	Captain Wm. Locklan Mackintosh.	2,953	9	6	-	-	-	Ditto - distribution among creditors.
	Gavork Manuk - - -	488	-	2	-	-	-	Ditto - sub-treasurer under Financial Secretary's letter of 8th October 1852.
	Mrs. G. A. Martin - -	583	-	3	-	-	-	Ditto - payment to uncle and guardian of deceased's children.
	Surgeon John M'Grath -	1,977	9	11	-	-	-	Ditto - payment of debts.
	George Medlicott - -	97	5	4	-	-	-	Ditto - payment of debts.
	John Mills - - -	3,067	3	2	-	-	-	Ditto - payment to the legatees.
	Stephen Norris (mariner) -	165	3	1	-	-	-	Ditto - payment to Joseph Wells.
	Mrs. Frances Norton - -	487	15	5	-	-	-	Ditto - payment to legatees.
	Mrs. Mary Pickanee - -	186	4	7	-	-	-	Ditto - distribution among creditors.
	Richard Reed - - -	3,314	-	9	-	-	-	Ditto - payment to the administrator of deceased.
	Lieutenant James Shaw -	2,746	6	3	-	-	-	Ditto - distribution among creditors.
	Sub-conductor Thos. Tapsell	39	-	8	-	-	-	Ditto - payment to widow and sons of deceased.

(continued)

DATE.	NAMES OF ESTATES.	Co.'s Rs.	a.	p.	AMOUNT. Co.'s Rs.	a.	p.	TO WHOM PAID.
1852-53:								
May 1852 - S. A.	Captain F. Trower - -	8,465	5	9	-	-	-	To Administrator-general, for payment of debts.
	Major N. S. Webb - -	813	4	6	-	-	-	Ditto - payment of debts.
	W. N. Whiter - - -	1,499	3	3	-	-	-	Ditto - payment to the children of deceased.
	Dr. David Woodburn - -	536	6	–	-	-	-	Ditto - payment of debts.
	Brevet-Major H. W. Bellew	102	–	5	-	-	-	Ditto - payment of debts.
	Captain C. D. Dawkins -	7,293	13	–	-	-	-	Ditto - payment to the father of deceased, and administrator in England.
	William Fowles - - -	1,166	6	9	-	-	-	Ditto - balance transferred to the estate of Henry Fowles.
	Major Wm. Hemmings -	8,234	5	4	-	-	-	Ditto - payment to the legatees.
	Henry Mackenzie - -	3,238	11	10	-	-	-	Ditto - ditto.
	Capt. Wm. Richd. Maidman	566	5	–	-	-	-	Ditto - distribution among creditors.
	Charles Newton - -	523	6	6	-	-	-	Ditto - ditto.
	Lieut.-colonel R. W. Pogson	415	1	11	-	-	-	Ditto - ditto.
	C. T. Sealy - - -	1,648	1	8	-	-	-	Ditto - payment to the son and daughter of deceased.
	Thomas Whiffin - - -	793	15	7	-	-	-	Ditto - distribution among creditors.
					94,323	3	2	
August 1852 - S. A.	Lieutenant G. M. Brodie -	2,732	10	11	-	-	-	Ditto - ditto.
	Richard Burgess - -	364	12	2	-	-	-	Ditto - ditto.
	Lieutenant James Evans -	2,578	3	6	-	-	-	Ditto - payment to the father of deceased.
	Assistant-surgeon W. G. Goodridge.	506	13	9	-	-	-	Ditto - payment to ditto, and administrator in England.
	James Hutchinson - -	962	8	–	-	-	-	Ditto - payment to a legatee.
	Capt. Stewart Leith (mariner)	248	15	7	-	-	-	Ditto - payment to next of kin of deceased.
	Lieutenant C. A. Lucas -	440	13	11	-	-	-	Ditto - payment to Presidency Paymaster.
	Lieut.-colonel J. Oliver -	5,805	9	11	-	-	-	Ditto - distribution among creditors.
	George Peters - - -	1,223	12	2	-	-	-	Ditto - payment to the legatees.
	Captain J. W. Robertson -	211	14	5	-	-	-	Ditto - payment to the administrator of deceased.
	Captain W. Smith - -	24	–	4	-	-	-	Ditto - distribution among creditors.
	Lieutenant G. H. W. Swete	611	13	5	-	-	-	Ditto - ditto.
	Lieutenant John Spence -	3,503	6	4	-	-	-	Ditto - ditto, and balance to father of deceased.
	Lieutenant G. A. Vallings -	1,582	11	4	-	-	-	Ditto - distribution among creditors.
	Lieutenant J. G. Woolen -	2,131	8	8	-	-	-	Ditto - ditto.
	Dr. Octavius Wray - -	437	6	7	-	-	-	Ditto - payment to the surviving trustee.
	Dr. G. T. Bayfield - -	318	15	–	-	-	-	Ditto - payment to the trustees and administrators in England.
	Sergeant T. B. Brown - -	126	11	3	-	-	-	Ditto - distribution among creditors.
	Robert Bruce - - -	267	10	8	-	-	-	Ditto - payment to the son of deceased.
	J. W. Higgins - - -	562	13	10	-	-	-	Ditto - payment to the legatees.
	Wm. Melville - - -	118	1	1	-	-	-	Ditto - ditto.
	John Pigou - - -	6,224	15	10	-	-	-	Ditto - ditto.
					30,986	4	8	
October 1852 - S. A.	J. G. W. Bruce - - -	63	15	2	-	-	-	Ditto - payment of debts.
	Joseph Chaplain - -	1,503	7	11	-	-	-	Ditto - ditto.
	Samuel Thomas Chapman -	258	3	1	-	-	-	Ditto - sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	Brevet-Capt. A. C. Campbell	59	12	6	-	-	-	Ditto - payment of debts.
	Lieutenant R. Ferrie - -	52	5	4	-	-	-	Ditto - payment to the East India Company.

AMOUNT.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
1852–53:		Co.'s Rs.	a.	p.	Co.'s Rs.	a.	p.	
October 1852 - S. A.	Captain A. J. Fraser - -	966	14	8	-	-	-	- - To Administrator-general, for payment of debts.
	Lieutenant William Gother -	90	5	4	-	-	-	Ditto - ditto.
	Lieutenant R. C. Hatch -	758	15	5	-	-	-	Ditto - ditto.
	Lieut. and Brevet-capt. J. H. Hutchell.	561	5	8	-	-	-	Ditto - ditto.
	Captain Thomas Hickman -	840	2	3	-	-	-	Ditto - payment to the legatees.
	Charles Humbert - -	2,877	4	2	-	-	-	Ditto - distribution among creditors.
	J. W. Jones - - -	1,608	8	6	-	-	-	Ditto - ditto - ditto.
	James Heymer - - -	369	1	5	-	-	-	Ditto - payment to executors, and executor of deceased in England.
	Dr. J. C. M'Donald - -	3,687	12	3	-	-	-	Ditto - distribution among creditors.
	Brevet-captain A. N.M. Macgregor.	828	13	7	-	-	-	Ditto - ditto.
	Lieutenant C. R. Maling -	183	12	9	-	-	-	Ditto - ditto.
	Malcolm J. Manock - -	177	4	5	-	-	-	Ditto - ditto.
	Captain James Marshall -	222	13	4	-	-	-	Ditto - ditto.
	Lieutenant Edward K. Money	601	2	10	-	-	-	Ditto - payment to the next of kin of deceased.
	Lieutenant J. P. Oatley -	1,403	6	11	-	-	-	Ditto - distribution among creditors.
	Surgeon W. E. Pollard -	1,039	3	7	-	-	-	Ditto - ditto.
	Lieutenant Samuel Pond -	161	15	1	-	-	-	Ditto - ditto.
	W. Quinon - - -	102	2	–	-	-	-	Ditto - ditto.
	Wm. Charles Frs. Rowlins -	197	8	3	-	-	-	Ditto - ditto.
	Lieutenant Henry Reid -	1,106	6	9	-	-	-	Ditto - ditto.
	Lieutenant D. F. Reid -	1,015	4	7	-	-	-	Ditto - ditto.
	Lieutenant and Brevet-captain James Remington.	195	–	2	-	-	-	Ditto - ditto.
	Captain H. C. Reynolds -	473	10	11	-	-	-	Ditto - ditto.
	Fred. Sloane (indigo planter)	1,218	13	1	-	-	-	Ditto - ditto.
	Ensign John Weston Smith	1,247	7	–	-	-	-	Ditto - ditto.
	Samuel Williamson - -	254	4	8	-	-	-	Ditto - sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	George Willis - - -	179	9	8	-	-	-	Ditto - payment of debts.
	Lieutenant Thos. Wm. Wilson	402	14	6	-	-	-	Ditto - sub treasurer, under Financial Secretary's letter of 8th October 1852.
	Charles Burdon - - -	44	12	7	-	-	-	Ditto - payment of debts.
	Major-general Henry Faithful.	1,668	4	5	-	-	-	Ditto - ditto.
	Lieutenant and Adjutant J. R. Graham.	1,357	2	4	-	-	-	Ditto - ditto.
	Mrs. Dixon - - -	133	14	7	-	-	-	Ditto - payment to the legatees.
	Lieutenant R. W. S. Tulloch	88	13	9	-	-	-	Ditto - payment of debts.
					28,002	11	5	
December 1852 - S. A. & C.	Brevet-captain and Lieutenant Thos. Bell.	94	4	10	-	-	-	Ditto - ditto.
	Edwd. Michael Betts - -	411	–	5	-	-	-	Ditto - payment to the legatees.
	William Henry Biden (master mariner).	3,619	14	1	-	-	-	Ditto - payment to the sister of deceased.
	Augustus W. Bodeman -	391	14	6	-	-	-	Ditto - payment to the father of deceased.
	Captain Wm. Bredfoot -	281	3	3	-	-	-	Ditto - payment of debts.
	R. W. Bruce (deputy postmaster).	313	14	3	-	-	-	Ditto - ditto.
	Captain Thos. Boyles - -	5,522	6	2	-	-	-	Ditto - ditto.
	Captain C. R. H. Christie -	419	9	9	-	-	-	Ditto - ditto.

DATE.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
1852-53:		*Co.'s Rs.*	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	
December 1852 S. A. & C.	Ensign R. Dunlop - -	805	3	7	-	-	-	- - To Administrator-general, for payment of debts.
	Ensign W. F. Fawcett -	1,368	14	9	-	-	-	Ditto - ditto.
	J. W. Higgins (branch pilot)	262	7	6	-	-	-	Ditto - ditto.
	Kenneth M'Queen - -	1,289	7	–	-	-	-	Ditto - payment to the legatees.
	Lieutenant H. Mainwaring -	639	9	1	-	-	-	Ditto - payment of debts.
	Rev. Henry Prott - -	1,032	15	1	-	-	-	Ditto - ditto.
	Band-master J. H. Price -	145	8	5	-	-	-	Ditto - ditto.
	Edward Rivett (pensioned sergeant).	1,016	–	11	-	-	-	Ditto - ditto.
	Donald Rose - - -	194	11	5	-	-	-	Ditto - ditto.
	George H. Stonehouse (indigo planter).	1,371	–	3	-	-	-	Ditto - ditto.
	Captain H. Fimings - -	54	4	8	-	-	-	Ditto - ditto.
	John Walsh, *alias* Thos. Walsh	332	5	5	-	-	-	Ditto - ditto, and balance to next of kin of deceased.
	Richard Edward West -	577	2	1	-	-	-	Ditto - payment of debts.
	C. F. Young - - -	650	–	5	-	-	-	Ditto - ditto.
	Henry Cock - - -	525	10	3	-	-	-	Ditto - ditto.
	W. Parlebean - - -	32	7	6	-	-	-	Ditto - ditto.
					21,351	15	7	
January 1853 - S. A.	Alexander Abbestie - -	613	6	5	-	-	-	Ditto - ditto, to the legatees of deceased.
	Captain John Sutherland -	4,174	11	–	-	-	-	Ditto - ditto, to D. Cowie.
					4,788	1	5	
February 1853 S. A. & C.	Alexander Botelho - -	180	10	10	-	-	-	Ditto - ditto, to the children of deceased.
	W. H. Field - - -	421	13	–	-	-	-	Ditto - payment of debts.
	Captain A. Gillet - -	1,564	3	5	-	-	-	Ditto - ditto.
	Lieutenant John Henry Gregg	1,576	15	4	-	-	-	Ditto - ditto.
	J. H. Haines (indigo planter)	1,122	13	11	-	-	-	Ditto - ditto.
	George Hardie (ditto) - -	629	10	1	-	-	-	Ditto - ditto
	Captain T. T. Harrington -	612	10	9	-	-	-	Ditto - ditto.
	Captain W. Hone - -	637	3	1	-	-	-	Ditto - ditto.
	N. J. Hudson (merchant) -	1,053	3	9	-	-	-	Ditto - balance transferred to the estate of N. Hudson.
	Lieutenant John Hunter -	976	8	6	-	-	-	Ditto - payment of debt.
	Captain A. R. Macdonald -	3,044	4	11	-	-	-	Ditto - payment to the legatees.
	Captain A. M. D. L. Maclean	1,470	–	6	-	-	-	Ditto - ditto.
	Alexander Ronald - -	1,988	4	11	-	-	-	Ditto - payment of debts.
	Samuel Webbs (stable-keeper)	2,158	12	11	-	-	-	Ditto - payment to the legatees.
	W. A. Brooke (trust account of a Mahomed woman).	363	13	1	-	-	-	Ditto - remittance to Moulvie Mehdi Alee Khan.
	R. B. Middleton - -	1,048	3	1	-	-	-	Ditto - payment of debts.
	Captain Francis Thomas -	525	15	7	-	-	-	Ditto - ditto.
	Captain G. A. W. Wallace -	975	13	3	-	-	-	Ditto - balance transferred to the share account of the daughter of deceased.
	A. Pole - - - -	77	11	5	-	-	-	Ditto - payment to the legatees.
	George Collins - - -	1,857	2	5	-	-	-	Ditto - payment to the son and administrator to the estate of B.
					22,285	14	9	
March 1853 - S. C.	Mrs. M. Legh - - -	-	-	-	132	6	7	Ditto - payment to one of the sons of deceased.
April 1853 - S. A.	Sergeant F. Neyna - -	261	11	3	-	-	-	Ditto - payment to the daughter of deceased.
	W. J. Baldwin - - -	828	11	3	-	-	-	Ditto - payment to the son of deceased.
	Joseph Ireland - - -	532	2	8	-	-	-	Ditto - payment to the legatees.
	Mrs. H. Macarthy - -	235	6	1	-	-	-	Ditto - payment to the daughter of deceased.
	Alexander M'Neil - -	441	1	–	-	-	-	Ditto - payment to Lieutenant D. M'Neil.
					2,299	–	3	

DATE.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
		Co.'s Rs.	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	
1853-1854:								
May 1853 - S. A.	E. C. Lawrence - - -	-	-	-	184	8	4	To Administrator-general for payment to the executor of deceased in England.
June 1853 - S. A.	Lieutenant Frederick S. M'Mullin.	306	2	6	-	-	-	Ditto - payment of debts and balance to sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	Lieut.-colonel G. J. Shadwell.	45	8	7	-	-	-	Ditto - sub-treasurer, in part payment of *Co.'s Rs.* 226. 7. 1. stated to be due from the deceased to Government.
	James Solitude (Inspector) -	67	13	-	-	-	-	Ditto - payment to daughter and next of kin of deceased.
	D. Wallace - - -	37	1	1	-	-	-	Ditto - payment to widow and legal representative of deceased.
	Captain Thomas Woodley -	290	12	11	-	-	-	Ditto - payment to son of the deceased.
	Captain Thomas Woodley (trust account for the Children).	509	15	3	-	-	-	Ditto - ditto.
					1,257	5	4	
July 1853 - S. A.	Lieutenant C. H. Jenkins -	104	15	4	-	-	-	Ditto - payment of debts.
	Captain J. Matheas - -	636	5	8	-	-	-	Ditto - ditto.
	Major William Mealy - -	612	8	8	-	-	-	Ditto - payment to son of deceased, and administrator in England.
	John Wheatall - - -	1,149	15	5	-	-	-	Ditto - payment to administrator to this estate.
					2,505	13	1	
September 1853 S. A.	Mrs. Eliza Hartley - -	155	6	5	-	-	-	Ditto - payment to sub-treasurer under Financial Secretary's letter, 8th October 1852.
	Alexander William Law, (C.S.)	133	1	11	-	-	-	Ditto - payment to the legatees.
	John Maxwell - - -	1,668	13	3	-	-	-	Ditto - payment to administrator to the estate of deceased.
	David Ovenstone (master mariner).	117	12	3	-	-	-	Ditto - payment to the legatees.
	Captain Joseph Whiteford -	155	3	7	-	-	-	Ditto - ditto.
					2,230	5	5	
October 1853 - S. A.	Mrs. E. C. Power - -	309	12	11	-	-	-	Ditto - payment of debts and balance to sub-treasurer, under Financial Secretary's letter of 8th October 1852.
	D. W. H. Speed - -	31	-	10	-	-	-	Ditto - payment of debts.
	Lieutenant R. Tapley - -	50	15	4	-	-	-	Ditto - ditto.
					391	13	1	
November 1853 S. A.	James Henry Wallace Read	221	6	11	-	-	-	Ditto - payment to the legatees.
	Mr. M. E. De Souza, on account of money deposited with Mr. T. Turton, as Registrar of the Admiralty Court, under instructions from Government Financial Department, dated 4th, and letter from the Officiating Accountant-general Department, dated 7th instant.	3,847	12	8	—			
					4,069	3	7	
December 1853 S. A.	Lieut. and Brevet-captain E. Garret.	1,673	9	9	-	-		Ditto - payment to a brother of deceased for distribution among relatives and next of kin of deceased.
	Surgeon John Kelly (trust account for Mrs. E. Kelly and Children).	228	-	7	-	-	-	Ditto - balance transferred to the share account of Mr. J. Kelly and Miss S. Kelly.
	Surgeon John Kelly (share account of Mr. J. Kelly).	23	9	4	-	-	-	Ditto - remittance to J. P Kelly.
	Surgeon John Kelly (share account of Miss S. Kelly).	25	7	7	-	-	-	Ditto - payment to the legatees.

DATE.	NAMES OF ESTATES.				AMOUNT.			TO WHOM PAID.
		Co.'s Rs.	*a.*	*p.*	*Co.'s Rs.*	*a.*	*p.*	
1853-54: December 1853 S. A.	A. C. M. Manick - -	3,662	12	8	- - -			To Administrator-general for payment to the legatees.
	J. T. Welcox - - -	129	5	5	- - -			Ditto - payment of debts.
					5,742	13	4	
March 1854 S. A.	Thomas Cottrell - -	93	14	6	- - -			Ditto - payment to the Solicitor of Her Majesty's Treasury, London
	Conductor George Grainger -	189	2	5	- - -			Ditto - payment to daughter of deceased.
	E. Toulmeins - - -	786	9	–	- - -			Ditto - distribution among creditors.
					1,069	9	11	
April 1854 - S. A.	Conductor W. Cowan (pensioned).	-	-	-	526	15	1	Ditto - payment to W. F. Snell.
May 1854 - S. A.	C. C. Greenway - -	869	13	6	- - -			Ditto - payment to the children of deceased.
	Sir William Hay Macnaghten, Bart.	35	6	4	- - -			Ditto - payment to the widow of the deceased in England.
					905	3	10	
June 1854 - S. A.	Quartermaster-sergeant Wm. Dennis.	514	–	11	- - -			Ditto - payment to Mrs. Mary Anne Rochfort.
	J. M. Wickens - - -	335	3	9	- - -			Ditto - payment to the sister of deceased and one of his next of kin.
	John Bentley - - -	22	11	4	- - -			Ditto - balance transferred to estate of R. H. Bentley.
	Edward Brightman - -	1,408	11	5	- - -			Ditto - distribution among creditors.
	Ramnarain Coondoo - -	1,137	12	9	- - -			Ditto - payment of costs in cause Rakhal Doss Coondoo, and others *v.* Hurrynarain Coondoo and others
	Captain William Alston -	393	10	6	- - -			Ditto - payment of debts.
	Captain S. T. Donnelly -	780	7	8	- - -			Ditto - payment to the Solicitor of Her Majesty's Treasury.
					4,592	10	4	
July 1854 - S. A.	Captain Thomas Starks, *alias* Lome Starks.	348	12	6	- - -			Ditto - payment to the legatees.
	Colonel H. Starks - -	190	10	7	- - -			Ditto - balance transferred to the estate of Capt. Thomas Starks, *alias* Lome Starks.
	Martin Hammond - -	1,888	7	10	- - -			Ditto - payment to the administrator in England, and next of kin
					2,427	14	11	
August 1854 - S. A.	Rosalie Baretto (widow) -	59	10	9	- - -			Ditto - payment to legatees.
	Mrs. H. H. Murooth - -	12,984	11	1	- - -			Ditto - payment to next of kin.
	Alexander Symers - -	356	13	6	- - -			Not yet paid away.
	Mrs. Rosalia Ferrao - -	804	9	2	- - -			To pay the interest for life to son, as directed by will.
					14,205	12	6	
		Co.'s Rs.			5,79,406	13	2	

(Errors excepted.)

Fort William,
Office of Accountant-General's Department,
22 November 1854.

(signed) *Edmd. Drummond,*
Officiating Accountant to the Government of Bengal.

(No. 1531.)

FROM the Hon. *E. Drummond*, Officiating Accountant to the Government of Bengal, to *C. H. Lushington*, Esq., Officiating Secretary to the Government of India.

Financial Department.

Sir,

1. WITH reference to your letter, No, 2523, dated 18 July last, I have the honour to submit for transmission to the home authorities, the statements noted in the margin*, required by the Honourable the House of Commons.

2. It will be seen that these statements do not give the precise information ordered by the Honourable House. The first statement is as required, an account of monies belonging to parties to whom the Registrar has administered, and which were subsequently paid into the General Treasury, under orders from your Department, dated the 8th October 1852. But these sums have not been invested in Government securities, because the amount belonging to each estate falls short of (500) five hundred rupees, they have however been retained in the Treasury as deposits, bearing interest at four per cent. per annum, to be repaid if claimed, or otherwise to lapse to Government at the end of 15 years, under the provisions of Act V. of 1851.

* 3. Account of all monies belonging to parties to whom the Registrar has administered, and in the hands of the Accountant-general, showing how the same is invested, the interest received, and how disposed of.

4. Account of the amounts paid and to whom, out of the unclaimed estates, in conformity with the recommendation of the Committee of Sir Thomas Turton's defalcation.

3. The second statement is an account of the amounts paid from the General Treasury, under sect. 3 of the aforesaid Act, to the Administrator-general, for payment to parties entitled to them. These payments, I beg to observe, are not made from the unclaimed estates, but in pursuance of the section of the Act quoted, from "The monies of the East India Company."

I have, &c.
(signed) *Edmd. Drummond*,
Officiating Accountant to the Government of Bengal.

Fort William,
22 November 1854.

SUPREME COURT OF CALCUTTA.

RETURNS of ESTATES to which the REGISTRARS of the SUPREME COURT of CALCUTTA have Administered, of which the whole or any part remain UNCLAIMED; of Estates Administered to by the Registrar from 25 February 1848 to 30 June 1854; of all Monies belonging to Parties to whom the Registrar has Administered in the hand of the Accountant-General; and of the Amounts paid, and to whom, out of the UNCLAIMED ESTATES, in pursuance of the Recommendation of the Committee on Sir *T. Turton's* Defalcations.

(*Mr. Roebuck.*)

Ordered, by The House of Commons, *to be Printed,*
17 *May* 1855.

Under 8 *oz.*

COPIES of PAPERS showing the present position of the Question of a CONTRACT LAW for *India*; and, of all REPORTS of the INDIAN LAW COMMISSIONERS on the subject of CONTRACTS.

—No. 1.—

Indian Law Commissioners to the Under Secretary of State for *India*.

Indian Law Commission, 20, Abingdon Street,
Sir, 31 July 1866.

I AM directed by the Indian Law Commissioners to transmit their Second Report on the Substantive Law of India.

I have, &c.
(signed) *W. Macpherson.*

The Under Secretary of State
for India.

SECOND REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners appointed to prepare a body of substantive law for India, have, since we made our First Report, applied ourselves principally to the subject of contract, which affords the most frequent occasion for litigation in all parts of that country, and on which we are satisfied that a law can be framed applicable to the whole population. The need of such law is manifest on a view of the existing state of things; which, in general terms, may be described by saying that, within the limits of the Presidency towns, the decision of suits of this nature is practically governed by the law of England, and that everywhere else the judge is to a great extent without the guidance of any positive law beyond the rule that his decision shall be such as he deems to be in accordance with "justice, equity, and good conscience."

It is essential that this large subject should be so treated that the rules of the several branches into which it divides itself shall form a consistent system. But we do not think it necessary or expedient to refrain on this account from following, with respect to those branches, the course recommended to us by Your Majesty's Secretary of State for India on our appointment, of submitting, as the progress of our labours might enable us to frame them, successive reports on the several departments of law. Accordingly we now humbly submit to Your Majesty rules of law which we have prepared on the subject of Contracts in general, of the Sale of Moveable Property, of Indemnity and Guarantee, of Bailment, of Agency, and of Partnership. The early enactment of these rules appears to us to be very advisable.

In framing them we have deemed it expedient to depart, more or less, from the English law in several particulars; of which we proceed to specify the most important.

In accordance with the principles upon which we prepared the rules of succession, we have not thought it necessary to place married women under any disability to contract.

We have not adopted, in framing these rules, the provisions of the English Statute of Frauds, which require certain contracts to be in writing. Those provisions are not of unquestionable expediency even in England; and we think

that they are not suited to the habits and present condition of the people of India.

We have considered whether it would be expedient to render binding in law promises made without consideration. By the English law, such promises are held to be binding only when expressed in writings under seal. We have not recognised any distinction between writings under seal and writings not under seal, but we think that in order to give validity to promises made without consideration, it ought to appear that they were made with due deliberation. In order to attain this object, we propose that such promises shall be binding only when they are given in writing, and are registered with the permission of the promisor, according to the provisions of the law for the time being in force for the registration of assurances.

s. 32. By the English law, a promise by a creditor to give time for the payment of an existing debt, or the acceptance by him, in full satisfaction of his demand, of a smaller sum than that which is due to him, is not binding on him unless there has been some new consideration given for it, such as an undertaking to give an additional or different security, or to pay the debt in a manner or at a time more advantageous to the creditor than that originally agreed upon; or unless the creditor's engagement to take less than his due, or to give time, be contained in a composition deed or agreement entered into by the debtor with his creditors generally; but a slight variation of the terms of the contract will satisfy these conditions. We have provided that a person who is entitled to claim performance of an engagement may dispense with or remit such performance wholly or in part, or may accept instead of it any satisfaction which he thinks fit.

s. 52. We propose that the extraordinary remedy of an order for Specific Performance should be restricted to the case of engagements for the creation or transfer of any interest in immovable property, or for the delivery of any specific article of moveable property. We have not, however, thought it right to include in the former category agreements to cultivate land in a particular manner or to grow particular crops; and we have provided that Injunctions shall not be granted to restrain the breach of engagements relating to the cultivation of land or the growing of particular crops.

With regard to goods sold by a person who has no right to sell them, the general rule of English law is, that the owner of the goods retains the ownership notwithstanding his having lost the possession of them, and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bonâ fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is therefore on the side of a rule favourable to the purchaser: and we think that sound policy with respect to the interests of commerce point to the same conclusion.

s. 80. We have therefore provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

ss. 80 and 176. Similar provisions have been inserted—in accordance, we may observe, with the spirit of the Factors' Act—to meet the cases of those who have purchased goods or taken them by way of pledge from persons in possession of any documentary title to the goods, where the circumstances are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell or to pledge the goods.

It would seem that by the English law if a buyer, or any person claiming under him, is by reason of the invalidity of the seller's title deprived of the thing sold, he cannot claim compensation from the seller for loss thereby caused. We propose that in such cases the seller shall be responsible, unless a contrary intention appears by the agreement.

In order to avoid the litigation which arises under the English law on the subject

subject of the distinction between penalty and liquidated damages, where the contract contains a stipulation that a specified sum shall be paid in case of its breach, we propose that the rule of law shall have no regard to that distinction, but simply require payment of the specified sum.

In dealing with the law of Suretyship, we have not thought it right to recognise a transaction so complicated, and tending so much to the unfair devolution of liability on the surety, as that by which a creditor who makes a composition with, or agrees to give time to, or not to sue, the principal, may yet reserve his rights and remedies against the surety. By the rule which we propose, an agreement between the creditor and the principal, by which the creditor makes a composition with, or agrees to give time to, the principal, or not to sue him, will discharge the surety; no exception being made in favour of the creditor in the case where he has endeavoured to reserve his rights and remedies against the surety. s. 134.

From a wish to avoid subtleties, and the attaching of unforeseen consequences to men's actions, we have provided that where there are co-sureties, a release of one of them by the creditor shall not discharge the others, nor free that one from responsibility to them. s. 137.

Adopting a provision of the French and Italian codes, we propose that the surety shall be discharged by any act or omission of the creditor, only in case the eventual remedy of the surety against the principal is thereby impaired. We also propose to enact that where upon the face of an agreement two persons are primarily liable to a third person, that liability shall not be affected so far as regards the third person by an arrangement between the two, that one of them shall be liable only upon the default of the other, even although such arrangement may have been known to the third person, unless he was a party to the arrangement. In this we adhere to the old and simple doctrine of the common law, rejecting the qualifications introduced by Courts of Equity. s. 138.

In our rules on the subject of Bailment we have discarded the complicated system of gradation which the English law applies to the amount of care which a bailee is to be expected to exercise, and the responsibility which is to attach to him; and we have framed our proposed law on the principle, that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would take of his own goods, and that more should not be required of him in any case.

We have endeavoured to improve the law applicable to the case where the bailor's goods have, without the consent of the bailor, been mixed up with the goods of the bailee, so that they cannot be separated. The remedy which our rule provides is, that the bailor shall be entitled to receive compensation for the loss of his goods, which seems more expedient than the provision of the English law, that the whole shall go indiscriminately to the person whose goods have been mixed without his consent.

We have provided that a continuing guarantee given by, to, or for a firm, shall not be rendered invalid by a change in the firm.

In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English Courts of Equity and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and after the death of the survivor to the representatives of both jointly. ss. 43 and 45.

We propose to lay it down that a person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

In defining the responsibility of a master for the misconduct of his servant, we have stopped a little short of the limits assigned to it by the English law. We think that the responsibility ought to cease as soon as the misconduct assumes the character of intentional wrong-doing. 223.

According to the English law, when there is any partnership property, the separate property of any partner must be employed first in the payment of his separate debts, and the surplus, if any, in the payment of the partnership debts; but when there is no partnership property, the separate property of any partner must be applied equally to the payment of all the partnership and separate debts for which such partner is liable. It thus depends upon the existence or non-existence of partnership property, no matter how small in amount, which of the two rules is to govern the division of the separate property of the partners. We

have thought it right so to frame the law that the rule first stated, which is more equitable, shall prevail, whether there is any partnership property or not. The principle on which we proceed is that of having regard to the views of the creditor in giving the credit. In contracts with a firm, partnership property is primarily looked to; in dealings with a partner with which the firm has nothing to do, all that is looked to is his own sufficiency.

s. 262. Adopting a rule which is to be found in the German and the Italian commercial codes, we propose that every person introduced as a partner into a pre-existing firm shall be subject to all the obligations incurred by the firm before he was introduced.

We have adopted, with such verbal alterations as were necessary to bring them into harmony with the language of our rules, the provisions of a law lately passed by the Indian Legislature, Act XV. of 1866, for relieving those who participate in the profits of a partnership without being really partners, from becoming liable for the engagements of the firm.

The Indian Legislature has recently passed an Act (X. of 1866) for regulating joint-stock companies, which appears to be in effect an extension to India of the English code as embodied in the Joint Companies Act of 1862. We have abstained for the present from entering upon the consideration of this subject.

We have to repeat the expression of our hope, conveyed in our last Report, that if the rules submitted by us to Your Majesty shall be enacted as law, those whose duty it may be to administer justice under them, will not resort to any other system of law for an authoritative solution of an ambiguity or supply of an omission, but will in such cases be entirely guided by regard to justice, equity, and good conscience.

CONTRACT.

1. A contract is an agreement between parties whereby a party engages to do a thing or engages not to do a thing.

A contract may contain several engagements; and they may be either by the same party or by different parties.

A contract may be expressed or implied, or partly expressed and partly implied.

A contract or part of a contract may be expressed either orally or by writing.

A contract or part of a contract is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustrations.

(*a.*) A. orally agrees with B. to buy of him at a certain price 500 maunds of rice. This is a contract expressed orally.

(*b.*) A. orders of B., by writing, 500 maunds of rice at a certain price. B. by writing accepts the order. This is a contract expressed by writing.

(*c.*) A. orally agrees with B. to buy of him 500 maunds of rice at a price to be fixed afterwards. The price is afterwards fixed by correspondence between A. and B. This is a contract expressed in part orally and in part by writing.

(*d.*) A. orally orders B., a tailor, to make him a coat. B. accepts the order. The contract thus made contains an implied engagement by B. that the coat to be made for A. shall be of suitable materials, and shall fit A.; and an implied engagement by A. that he will accept the coat, and will pay for it, if within a reasonable time it shall be so made.

(*e.*) A., by writing, orders of B. 500 maunds of the best rice, lying in his godowns. B. accepts the order. There is an implied engagement on A.'s part to pay a reasonable price for the rice.

2. Every person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may enter into a contract.

Explanation 1.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for entering into a contract if they are able to know what they do by it.

Explanation 2.—One who is ordinarily insane may make a contract during an interval in which he is of sound mind.

Explanation

Explanation 3.—No person can enter into a contract while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

3. A proposal to enter into a contract may be retracted, or the terms of it altered by the party making it, at any time before it is accepted.

Explanation.—A proposal is said to be accepted when an expressed acceptance of it has been communicated to the proposer; or when a letter of acceptance is posted or a telegraphic message of acceptance is delivered at a proper office, and the acceptance by letter or telegram is not cancelled by some communication which reaches the proposer before or at the same time with the letter or telegram of acceptance; or when acceptance is to be inferred from the circumstances of the case.

Illustration.

A. sends goods to B. for sale or return. B. sells the goods to C. B. has accepted the goods.

4. A proposal does not bind the party making it, unless it be accepted within the time prescribed for its acceptance, or, if no time is prescribed, within a reasonable time.

5. Any engagement which a contracting party has been induced to form by deceit or coercion, or by such influence as impedes or interferes with the freedom of his agency, renders the contract voidable at the option of that party.

Explanation 1.—Deceit may be practised on a person, not only by intentionally inducing him to believe what is not true, but by intentionally concealing truth from him.

Explanation 2.—In order to enable a party to annul a contract by reason of deceit, it must appear, where a false representation has been made, that he relied on the representation; and where the truth has been concealed, that he had not the means with ordinary diligence of discovering the truth.

Illustrations.

(*a.*) A., intending to deceive B., falsely represents that 500 maunds of indigo are made annually at A.'s factory, and thereby induces B. to buy the factory. The contract is voidable.

(*b.*) A., in order to deceive B., falsely informs him that 500 maunds of indigo are made annually at A.'s factory. B., not relying on this statement, examines the accounts of the factory, which show that only 400 maunds of indigo have been made. After this B. buys the factory. The contract is not voidable on account of A.'s mis-statement.

(*c.*) B. having discovered a vein of coal on A.'s estate, does not communicate that circumstance to A., and buys the estate at a price fixed by A., in ignorance of the existence of the coal. The sale is not voidable on account of B.'s conduct.

(*d.*) B. having discovered a vein of ore on the estate of A., adopts means to conceal and does conceal from A. the existence of the ore, so that A. cannot with ordinary diligence discern its existence. Through A.'s ignorance B. is enabled to buy the estate at an undervalue. The sale is voidable.

(*e.*) A. is entitled to succeed to an estate at the death of B. B. dies. C., having received intelligence of B.'s death, conceals the fact from A., and induces A. to sell him his interest in the estate. The sale is voidable.

(*f.*) B., by deceit, induces A. to enter into an engagement with B. for the benefit of C., who is not privy to the deceit. The engagement is voidable.

(*g.*) A., a young female who has resided during her minority in the family of B., her guardian, continues to reside with him after attaining majority, and is induced, by means of his influence, to enter into a contract with him which is disadvantageous to herself. The contract is voidable.

6. A person who, either knowingly or ignorantly, makes a false representation whereby he induces another to enter into a contract with him, is bound to place the other in the same position as if the representation had been true, and in default of his doing so the contract is voidable at the option of the person who has been misled.

Explanation.—Where a party's consent to an engagement by contract has been given through a mistake as to the substance of the thing which is the sub-

ject of the engagement, and the mistake was occasioned, however innocently, by the other party, this has the same effect as a false representation.

Illustrations.

(*a.*) A. informs B. that A.'s estate is exempt from the payment of revenue to Government; B. thereupon buys the estate. It turns out that the estate is not exempt from the payment of revenue, and that such exemption cannot be obtained. The sale is voidable.

(*b.*) A. informs B. that A.'s estate is within a mile of the town of Ramnuggur; B. thereupon buys the estate. The estate is found to be two miles from the town. The sale is voidable.

(*c.*) A. informs B. that A.'s estate is free from incumbrance; B. thereupon buys the estate. It turns out that the estate is subject to a mortgage. A. must redeem the mortgage; or if he cannot do so the contract is voidable.

(*d.*) A. and B. are partners in a mercantile business. A. is the managing partner, B. is ignorant of the state of the business. A. and B., in order to induce C. to become a partner with them, show him a statement of the affairs of the partnership, which is wrong by a large amount. C., relying upon the statement, joins the firm, and for several years does not discover the falsity of the statement. The contract of partnership is voidable at the option of C.

7. Where both the parties to an engagement by contract are under a mistake as to a matter of fact essential to the engagement, the engagement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the contract, is not to be considered a mistake as to a matter of fact.

Illustrations.

(*a.*) A. agrees to sell to B. a cargo of goods, supposed to be on its way from England to Bombay. It turns out that before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The contract is void.

(*b.*) A. buys of B. a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The sale is void.

(*c.*) A., being entitled to an estate for the life of B., agrees to sell it to C. B. was dead at the time of the contract, but both parties were ignorant of the fact. The contract is void.

8. The validity of a contract is not affected by the circumstance that a party was at the time of making it under a mistake of law.

Explanation.—A mistake in respect of a law not in force in India has the legal consequences of a mistake, not of law, but of fact.

Illustration.

A. owes to B. a debt, the payment of which at a fixed time is guaranteed by C. B. contracts with A. to give time to A., C. not assenting to the arrangement. B. is not aware at the time of entering into this contract, that its legal effect will be to discharge C. from liability under his guarantee. B. is nevertheless bound by his contract to give time to A.

9. The subject of every contract must be certain, or capable of being made certain.

Illustrations.

(*a.*) A. agrees to sell to B. "100 tons of oil," the kind of oil not being specified or in any way indicated. The contract is void for uncertainty.

(*b.*) A. agrees to sell to B. 100 tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to prevent the contract from being valid.

(*c.*) A., who is a dealer in cocoa-nut oil only, agrees to sell to B. "100 tons of oil." The nature of A.'s trade affords an indication of the meaning of the words, and A. has entered into a contract for the sale of 100 tons of cocoa-nut oil.

(*d.*) A. agrees to sell to B. "all the grain in his granary at Ramnuggur." There is no uncertainty here to prevent the contract from being valid.

(*e.*) A. agrees to sell to B. 1,000 maunds of rice at a price to be fixed by C. The subject of the contract is capable of being made certain, and there is no uncertainty here to prevent the contract from being valid.

10. In order to the validity of an engagement by contract, there must be a lawful object and a good consideration.

First

First Exception.—A person who makes a promise, whether upon good consideration or not, is bound to perform it if the promise be expressed in writing and duly registered according to the provisions of the law for the time being in force for the registration of assurances, unless the promise is unlawful or is based on an unlawful consideration.

Second Exception.—A person who makes an express promise without good consideration is bound to perform it, if it be a promise to compensate wholly or in part a person who has already voluntarily done something which the person who makes the promise was legally compellable to do; or if it be a promise to pay wholly or in part a debt which the creditor is legally entitled to receive from the person who makes the promise, but of which by reason of the law for the limitation of suits he cannot enforce payment.

Explanation 1.—A good consideration must be lawful.

Explanation 2.—An object, a consideration, or a promise is said to be lawful when it is not contrary to law or to morality.

Explanation 3.—A good consideration must be something which at the desire of the person entering into the engagement another person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing.

Illustrations.

(*a.*) A. engages by contract with B. to sell his house to B. for 10,000 rupees. Here there is an engagement by A. to B., and an engagement by B. to A., and these engagements are valid, there being in each case a lawful object, and a good consideration.

(*b.*) A. agrees to sell his house at Ramnugger to B. for 10,000 rupees. Here the promise to pay the sum of 10,000 rupees is the consideration for A.'s entering into the contract; and the promise to convey the house is the consideration for B.'s entering into the contract. These are good considerations.

(*c.*) A. engages to pay B. 1,000 rupees at the end of six months if C., who owes that sum to B., fails to pay it. B. engages to grant time to C. accordingly. Here the engagement of each party is the consideration for the engagement of the other party; and they are good considerations.

(*d.*) A. engages, for a certain sum paid to him by B., to make good to B. the value of his ship, if it shall perish by shipwreck on a certain voyage. Here A.'s promise is the consideration for B.'s payment, and B.'s payment is the consideration for A.'s promise; and these are good considerations.

(*e.*) A. engages to maintain B.'s child, and B. engages to pay A. 1,000 rupees yearly for the purpose. Here the engagement of each party is the consideration for the engagement of the other party. They are good considerations.

(*f.*) A., B., and C. enter into a contract for the division among them of gains acquired or to be acquired by them by fraud. The contract is void.

(*g.*) A. undertakes to obtain for B. an employment in the public service, and B. agrees to pay 1,000 rupees to A. The contract is void, as the consideration for it is illegal.

(*h.*) A., being agent for a landed proprietor, agrees, for money, without the knowledge of his principal, to obtain for B. a lease of land belonging to his principal. The contract between A. and B. is void, being contrary to A.'s duty as agent.

(*i.*) A. engages with B. to drop a prosecution which he has instituted against B. for robbery, and B. engages to restore the value of the things taken. The contract is void.

(*j.*) A.'s estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B. upon an understanding with A. becomes the purchaser, and agrees to convey the estate to A. upon receiving from him the price which B. has paid. B.'s engagement is void, as it renders the transaction in effect a purchase by the defaulter.

(*k.*) A. engages to superintend on behalf of B. a legal manufacture of indigo and an illegal traffic in other articles. B. enters into an engagement to pay to A. a salary of 10,000 rupees a year. B.'s engagement is void, the consideration being in part unlawful.

(*l.*) A. voluntarily pays B. a sum of money which is due to B. from C. Afterwards C. promises to reimburse A. C. is bound to perform the promise.

11. An engagement by contract may be made to take effect only in case a specified uncertain event shall happen. The event may be the performance of something that constitutes the consideration or part of the consideration for the engagement, or it may be an event distinct from such performance.

Illustrations.

(*a.*) A. sells goods to B. for a fixed price and engages to deliver them to him on receiving payment in full. A.'s engagement to deliver the goods does not become absolute until B. pays or tenders to him the price.

(*b.*) A. sells goods to B. for a fixed price, to be paid by instalments; and engages to deliver

deliver them to him on receiving payment of the first instalment. A.'s engagement to deliver the goods does not become absolute until B. pays or tenders to him the first instalment.

(*c.*) A. enters into an engagement by contract with B. to buy B.'s house for 10,000 rupees if A. shall survive C. A.'s engagement does not become absolute until C. dies, leaving A. surviving him.

(*d.*) A. enters into an engagement by contract with B. to sell a horse to B. at a specified price in case C., to whom the horse has been offered, shall refuse to buy it. A.'s engagement does not become absolute until C. refuses to buy the horse.

12. An engagement by contract which is intended to take effect only in case a specified uncertain event shall not happen, does not become absolute until the happening of that event becomes impossible.

13. Where an engagement by contract is intended to take effect only in case a specified uncertain event shall happen within a fixed time, and the time expires without the event having occurred, the engagement becomes void. Where no time has been fixed for the happening of the event the engagement becomes void as soon as it is ascertained that the event will not happen.

Illustrations.

(*a.*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall return within a year from the time of the contract. The year elapses without the ship having returned. The engagement becomes void.

(*b.*) A. enters into an engagement by contract to pay B. a certain sum of money if C. shall leave a son surviving him. C. dies, not leaving a son surviving him. The engagement becomes void.

14. Where an engagement by contract is intended to take effect in case a specified event shall not happen within a fixed time, the engagement does not become absolute until the time has expired without the event having occurred, or until before the time fixed, it is ascertained that the event will not occur. Where no time has been fixed the engagement becomes absolute as soon as it is ascertained that the event will not happen.

Illustrations.

(*a.*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return within a year. At the end of six months it is ascertained that the ship has been lost. The engagement has become absolute.

(*b.*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return. It is ascertained that the ship has been lost. The engagement has become absolute.

15. Where the order in which different engagements are to be performed is not expressly fixed by the contract, it shall be that order which the nature of the transaction requires.

Illustrations.

(*a.*) A. enters into an engagement by contract to build a house for B. at a fixed price. B. engages to pay the price. B.'s engagement does not become absolute until A. finishes the house.

(*b.*) A., a tradesman, enters into an engagement by contract to make over his stock in trade to B. at a fixed price, and B. engages to give security for the payment of the money. A.'s engagement does not become absolute until the security is given; for the essence of the engagement is, that A. should have security before he delivers up his stock.

16. Where one of two engagements by contract has been entered into in consideration of the other, and a time is appointed for the performance of one of them, which time is to arrive before the reciprocal engagement can be performed, the latter does not become absolute until the former has been performed.

Illustrations.

(*a.*) A. contracts with B. to sell to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B. engages to pay for the merchandise within a week from the date of the contract. A.'s engagement does not become absolute until B.'s engagement has been fulfilled.

(*b.*) A. contracts with B. to sell him 100 bales of merchandise to be delivered next day, and B. engages to pay for them within a month. B.'s engagement does not become absolute until the merchandise has been delivered to him.

17. The

17. The parties to a contract are bound to afford to each other all reasonable facilities for performing their engagements.

18. Where an engagement by contract is intended to take effect on the happening of an event, and the party who has entered into the engagement prevents the happening of the event, he becomes liable to perform the engagement, or to make compensation to the other party, for any loss which he may have sustained in consequence of its non-performance.

Illustration.

A. engages to pay 1,000 rupees to B., provided that B. shall execute certain work for him; and B. engages to execute the work. B. is ready and willing to execute the work accordingly, but A. prevents him from doing so. A.'s engagement has become absolute.

19. When a person having entered into an engagement by contract with another fails to do an act which he is bound by law to do, and which is necessary to enable the other to perform his part of the contract, the party who has failed to do such act is liable to make compensation to the other party for any loss or damage which he may have sustained in consequence of the non-performance of it.

Illustrations.

(*a.*) A. hires B.'s ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A., B. receiving a certain freight for its conveyance. A. does not provide any cargo for the ship. A. must make compensation to B. for his failure.

(*b.*) A. enters into an engagement by contract with B. to execute certain builders' work, for a fixed price, B. supplying the scaffolding and timber necessary for the work. B. refuses to furnish any scaffolding or timber, and the work cannot be executed. B. is bound to make compensation to A. for any loss.

20. When there are mutual engagements by contract, and one of them is an entire and indivisible engagement by contract for the doing of a particular thing by a fixed time, time is of the essence of the contract, and unless the thing be done at the stipulated time the reciprocal engagement, if any, does not become absolute.

21. Where there are mutual engagements by contract, and one of them is an engagement for the doing of several things at different times, and the things stipulated are done, but not at the times specified, this irregularity does not prevent the reciprocal engagement from becoming absolute, but the person who entered into the latter engagement is entitled to compensation for any loss which he may have sustained in consequence of the irregularity.

22. When an engagement by contract is conditional, and the condition fails to be fulfilled, the engagement becomes void.

Illustration.

A. engages to pay 10,000 rupees to B. if he will marry A.'s daughter. A.'s daughter was dead at the date of the engagement. The condition cannot be fulfilled, and the engagement is void.

23. An engagement by contract may be made with the condition superadded, that it shall be terminated or varied in case a specified uncertain event shall happen; or that it shall be terminated or varied in case a specified uncertain event shall not happen.

24. A condition of the kind described in the last preceding section is invalid, and does not affect the engagement to which it is superadded, if at the time of the contract the event is impossible, or if it is repugnant to law or morality, or inconsistent with the main purpose of the contract.

25. An engagement to which is superadded a condition of the kind described in Section 23 becomes void if the fulfilment of the condition is, subsequently to the contract, rendered unlawful, or is made impossible by some unforeseen event which the person who entered into the engagement could not prevent.

Illustrations.

(*a.*) A. engages to pay B. 5,000 rupees, provided that the engagement shall be void if A. takes in cargo for B. at a certain port. The Government afterwards declares war against

the country in which the port is situated, so that A. cannot trade there. The engagement becomes void.

(*b.*) A., a singer, who has undertaken to sing at B.'s theatre, engages to pay B. 20,000 rupees, provided that the engagement shall be void if A. sings at B.'s theatre on a certain number of nights in the month of June. A. before June loses his voice through illness. The engagement to pay 20,000 rupees becomes void.

26. Where an engagement by contract is made with a condition superadded, that it shall be terminated or varied unless a certain person shall perform a specified act, but no time is specified for the performance of the Act; if such person takes any step which renders impossible or indefinitely postpones the performance of the act required, the engagement shall be terminated or varied as if such person had died without performing the Act.

27. If a condition of the kind described in Section 23 consists in doing one or the other of two things, and one of them is unlawful or impossible, the condition can only be fulfilled by doing the other.

Illustration.

A. engages by contract to pay B. a fixed sum, provided that if A. delivers to B. on a certain future day either 20 maunds of the finest rice, or a certain quantity of opium to be obtained contrary to law, the engagement shall be void. The condition cannot be fulfilled otherwise than by the delivery of 20 maunds of the finest rice.

28. A person who fails to do an act which he has engaged by contract to do, shall make compensation to the person in whose favour the act was to be done.

Exception.—A man incurs no liability through the non-performance of an act which he has engaged by contract to do, where, since the date of the contract, the performance of the act has been rendered unlawful, or has been made impossible by some event of which he did not, expressly or by implication, take upon himself the risk.

Illustrations

(*a.*) A. engages to deliver to B. at a certain price, at a specified time and place, a cargo of merchandise then at sea in his ship. The ship is afterwards lost at sea, with all its cargo. A. is liable to make compensation to B. for the non-performance of his engagement.

(*b.*) A. freighted B.'s ship to proceed to the Island of Ichaboe, and there to take in a cargo of guano, to be supplied by A., and to convey it to a certain port. The guano at Ichaboe was entirely exhausted before the ship arrived, and it was impossible for A. to supply a cargo. A. must make compensation to B. for the non-performance of his engagement.

(*c.*) A., the owner of a music hall, agrees to let B. have the use of it for four days in June for the purpose of giving concerts in it; B. to pay 1,000 rupees a day. On the 30th of May the hall is accidentally destroyed by fire without the fault of either party. Neither party is bound to make compensation for the non-performance of the act which he engaged by the contract to do.

(*d.*) A., a painter, enters into an engagement to paint a picture for B. A. becomes blind. A. is not liable to make compensation to B. for not painting the picture.

(*e.*) A. engages to take in cargo at a certain port. The Government afterwards declares war against the country in which the port is situated, so that A. cannot trade there. He is not bound to make compensation for failure to take in cargo at the specified port.

29. For the purpose of determining questions as to the meaning of a contract, a court must inquire into every material fact relating to the situation of the parties to, or the subject matter of such contract, and into every fact a knowledge of which may conduce to the right application of the words which the contracting parties have used.

30. An engagement by contract must be performed by the person who has entered into it, unless its nature be such that it can be properly performed by another, in which case he may employ a competent person to perform it; or if he dies before performance, his representatives may perform it, or employ a competent person to do so.

Illustrations.

(*a.*) A. engages to pay B. a sum of money. He may perform this engagement, either by personally paying the money to B., or by causing it to be paid to B. by another; and if A. dies

A. dies before the time appointed for payment, his representatives may perform the engagement.

(*b.*) A engages to paint a picture for B. This engagement cannot be performed except by A.'s painting the picture himself.

31. Where a person who is entitled to claim from another the performance of an engagement accepts such performance from a third person, he cannot afterwards enforce it against the person who entered into the engagement.

32. A person who is entitled to claim performance of an engagement may dispense with or remit such performance, wholly or in part, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a.*) A. engages to paint a picture for B. B. afterwards expressly forbids him to do so. A. is no longer bound to perform the engagement.

(*b.*) A. owes B. 5,000 rupees. By agreement A. pays to B. and B. accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c.*) A. owes B. 5,000 rupees. C. pays to B. 1,000 rupees, and B. accepts them in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d.*) A. owes B., under a contract, a sum of money, the amount of which has not been ascertained. A., without ascertaining the amount, gives to B., and B., in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e.*) A. owes B. 2,000 rupees, and is also indebted to other creditors. A. makes an arrangement with his creditors, including B., to pay them a composition of 8 annas in the rupee upon their respective demands. Payment to B. of 1,000 rupees is a discharge of B.'s demand.

33. If a person who is entitled to claim the performance of an engagement by contract accepts a new and distinct contract by way of substitution for the existing one, the original engagement is no longer in force.

Illustrations.

(*a.*) A. owes money to B. under a contract. It is agreed between A., B., and C. that B. shall thenceforth accept C. as his debtor instead of A. The old debt of A. to B. is at an end, and a new debt from C. to B. has been contracted.

(*b.*) A. owes B. 10,000 rupees. A. enters into an arrangement with B. and gives him a mortgage of A.'s estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract.

(*c.*) A. and B. have mercantile transactions with each other, and A. thereby becomes indebted to B. in the sum of 10,000 rupees, for which B. holds no security. Afterwards A. executes a bond in favour of B. to secure the payment of the sum due to him. The execution of this bond does not constitute a new and distinct contract.

(*d.*) A. owes B. 1,000 rupees under a contract; B. owes C. 1,000 rupees. B. orders A. to pay 1,000 rupees to C. C. does not assent to the arrangement. B. still owes C. 1,000 rupees, and no new contract has been entered into.

34. Where by the contract a person is to perform his engagement without application by the person with whom he made the engagement, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question what is a reasonable time is in each particular case a question of fact.

Illustrations.

(*a.*) A. sells fresh provisions to B., to be delivered by A. to B. No time for delivery is specified. After the lapse of a week A. tenders the provisions to B. B. need not accept them, as the offer was not made within a reasonable time.

(*b.*) B. orders A., a tailor, to make and to send him a coat. A. sends home the coat after the lapse of two months. B. need not accept it, as the delivery was not made within a reasonable time.

(*c.*) A., a bookseller in Calcutta, sells to B. a book, to be delivered to B. at his residence in Calcutta. A. afterwards casually hears a false report, that B. is absent from Calcutta, and without taking any means to inform himself as to the correctness of the report, neglects for three months to deliver the book, and at the end of that time sends it to B.'s residence. B. need not accept the book, as delivery was not made within a reasonable time.

 35. When

35. When an engagement is to be performed on a certain day, and the person entering into the engagement has undertaken to perform it without application, he has the whole of that day to perform the engagement in; subject to this qualification, that the person who is to receive performance is not bound to receive it before or after the usual hours of business, or at any other place than that at which the engagement ought to be performed.

Illustration.

A. engages to deliver goods at B.'s warehouse on the 1st January. On that day A. brings the goods to B.'s warehouse, but after the usual hour for closing it, and they are not received. A. has not performed his engagement.

36. When the engagement is to be performed on a certain day, and the person entering into the engagement has not undertaken to perform it without application, it is the duty of the person in whose favour the engagement is made, to apply for performance at a proper time and place.

Explanation.—The question what is a proper time and place is in each particular case a question of fact.

37. Where an engagement is to be performed without application, and no place is fixed for the performance of it, the person bound by the engagement must perform it at any reasonable place which the person with whom the engagement was made may appoint.

Illustration.

A. undertakes to pay B. 1,000 rupees on a fixed day. A. must apply to B. to appoint a reasonable place for the purpose of receiving it, and B. must pay it to him at such place.

38. The performance is valid if made in any manner or at any time which the person entitled to claim performance may have prescribed, or may have subsequently sanctioned.

Illustrations.

(*a.*) B. owes A. 2,000 rupees. A. desires B. to pay the amount to A.'s account with C. a banker. B., who also banks with C., orders the amount to be transferred from his account to A.'s credit, and this is done by C. Afterwards, and before A. knows of this, C. fails. This is a good payment by B.

(*b.*) A. and B. are mutually indebted. A. and B. settle an account by setting off one item against another, and B. pays A. the balance found to be due from him upon such settlement. This amounts to a payment by A. and B. respectively of the sums which they owed to each other.

(*c.*) A. owes B. 2,000 rupees. A. and B. agree that B. shall receive some of A.'s goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d.*) A. owes B. 2,000 rupees. A. gives to B., and B. accepts, a cheque for that amount drawn by A. This operates as payment, provided the cheque be duly paid.

(*e.*) A. desires B., who owes him a sum of money, to remit the amount of his debt by post. The debt is discharged as soon as B. puts into the post a letter containing the money, duly addressed to A.

39. Where a man owing several distinct debts to one person makes a payment to him, either with express intimation, or under circumstances, implying that the payment is to be applied to some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(*a.*) A. owes B. (among other debts) 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B. no other debt of that amount. On the 1st June A. pays to B. 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b.*) A. owes to B. (among other debts) the sum of 567 rupees. B. writes to A. and demands payment of this sum. A. sends to B. 567 rupees. This payment is to be applied to the discharge of the debt of which B. had demanded payment.

40. Where the debtor has omitted to intimate to which debt the payment is to be applied, the creditor is at liberty to apply it at his discretion to any lawful debt actually due and payable to him from the payer, on giving notice thereof to the payer within a reasonable time.

41. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time. If they are of equal standing, the payment shall be applied in discharge of each proportionately.

42. Were

42. Where a person who has come under an engagement to another has made him an offer of performance, and the offer has not been accepted, the person who has made such offer is not responsible for non-performance so caused, nor does he thereby lose his title to claim performance of any reciprocal engagement.

43. In order to constitute a valid offer of performance, the following rules must be observed :—

First. The offer must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining whether the thing tendered really is what it purports to be.

Second. The offer must be a tender of the whole thing which the other party to the engagement is entitled to demand.

Third. It must be unconditional.

Fourth. An offer to one of several joint creditors has the same legal consequences as an offer to all of them.

Explanation.—Where the performance of an engagement would involve the production of a certain thing, it is not necessary to the validity of a tender that the thing should actually be produced, if the person entitled to claim performance does not require that it should be produced.

44. When two persons have jointly come under an engagement by contract to a third person, then, unless a contrary intention appears by the contract, the liability to perform the engagement rests, as between them and him, on those two persons during their joint lives, and after the death of either, on his representative jointly with the survivor, and after the death of the survivor, on the representatives of both jointly.

45. As between themselves, persons who have jointly come under an engagement are bound (unless a contrary intention appears by the contract) to bear the burden of its performance equally; and if one of them is unable to bear his share of the burden, the others must make up the deficiency by equal contributions.

Explanation.—This rule is not to prevent a surety from recovering his disbursements from the principal, or to entitle the principal to recover anything from the surety.

Illustrations.

(*a.*) A., B., and C. are under a joint engagement to pay D. the sum of 3,000 rupees. A. is insolvent, but his assets are sufficient to pay one-half of his debts. A.'s estate pays 500 rupees. B. and C. must pay 1,250 rupees each.

(*b.*) A., B., and C. are under a joint engagement to pay D. 3,000 rupees, A. and B. being in fact only sureties for C. C. is unable to pay anything, and A. pays the whole. A. is entitled to receive 1,500 rupees from B.

(*c.*) A., B., and C. are under a joint engagement to pay D. 3,000 rupees, A. and B. being in fact only sureties for C. C. is unable to pay; A. and B. are compelled to pay the whole sum. They are entitled to recover it from C.

46. Where two persons have jointly come under an engagement by contract to a third person, a release by the creditor of one of them does not discharge the other; neither does it free that one from responsibility to the other. See s. 135.

47. When a person has come under an engagement by contract to two other persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests (as between him and them) with them during their joint lives, and after the death of either, with his representative jointly with the survivor, and after the death of the survivor, with the representatives of both jointly.

Illustration.

A., in consideration of 5,000 rupees lent to him by B. and C., enters into an engagement by contract with B. and C. to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B.'s representative jointly with C., during C.'s life, and after the death of C. with the representatives of B. and C. jointly.

48. When a party to a contract has refused to perform, or disabled himself from peforming, his engagement in its entirety, the party who has entered into the reciprocal engagement may put an end to the contract, provided he has not signified, expressly or impliedly, that he acquiesced in its continuance.

Illustrations.

(*a*). A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B. engages to pay her 100 rupees for each night's performance. On the sixth night the signer wilfully absents herself from the theatre. B. is at liberty to put an end to the contract.

(*b*). A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week, during the next two months; and B. engages to pay her at the rate of 100 rupees for each night. On the sixth night the singer wilfully absents herself. With the assent of B. she sings on the seventh night. B. has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through her failure.

49. A person who rightfully puts an end to an engagement is entitled to compensation for any damage he has sustained.

50. When a contract has been broken, if a sum is named in the contract itself as the amount to be paid in case of such breach, the amount so named shall be paid accordingly; but if no sum has been named in the contract itself, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for loss or damage caused to him thereby, provided that it has naturally arisen in the usual course of things from such breach, or that it was in the knowledge of the parties at the time they made the contract, that such loss or damage would probably result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the engagement must be taken into account.

Illustrations.

(*a.*) A enters into an engagement by contract, that in case he fails to pay B. 500 rupees on a certain day, he shall immediately become liable to pay him 1,000 rupees. A fails to pay B. 500 rupees on the day named. A. has become liable to pay B. 1,000 rupees.

(*b.*) A. enters into an engagement by contract, that if he practises as a surgeon in the town of Z., he shall pay B. 5,000 rupees. A. commits a breach of the engagement. The sum of 5,000 rupees is actually payable by A. to B.

(*c.*) A. agrees to sell and deliver 50 maunds of saltpetre to B. at a certain price, to be paid on delivery. A. breaks his engagement. B. is entitled to receive from A. by way of compensation the sum, if any, by which the contract price falls short of the price for which B. might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*d.*) A. hires B.'s ship to go to Bombay, and there take on board on the 1st of January a cargo (which A. is to provide) and to bring it to Calcutta; the freight to be paid when earned. B.'s ship does not go to Bombay, but A. has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A. avails himself of those opportunities, but is put to trouble and expense in doing so. A. is entitled to receive compensation from B. in respect of such trouble and expense.

(*e.*) A. agrees to sell and deliver to B. on the 1st of January, at a stated price, a certain quantity of cotton, to be paid for on delivery. Afterwards, on the 1st December, A. announces to B. that he does not intend to perform his engagement, and on the 1st of January he delivers no cotton to B. B. is entitled to receive from A., by way of compensation, the excess, if any, of price of the like quantity of cotton on the 1st of January over the contract price.

(*f.*) A. agrees to sell and deliver to B. on the 1st of January a certain quantity of sugar, for which B. pays him in advance. Afterwards, on the 1st of December, A. informs B. that he does not intend to deliver the sugar, and on the 1st of January he does not deliver it. B. is entitled to receive from A. the money paid, together with current mercantile interest, and also by way of compensation, the excess, if any, of the sum for which the sugar could have been procured by him on the 1st of January, over the sum paid in advance.

(*g.*) A. agrees to buy of B., at a stated price, 50 maunds of rice, no time being fixed for delivery. A. afterwards intimates to B. that he will not accept the rice if tendered to him. B. is entitled to receive from A., by way of compensation, the amount, if any, by which the contract price exceeds that which B. could have obtained for the rice at the time of the refusal.

(*h.*) A. agrees to buy B.'s ship for 60,000 rupees, but breaks his engagement. A. must pay to B., by way of compensation, the excess, if any, of the contract price over the price which B. can obtain for the ship at the time of the breach of engagement.

(*i.*) A. agrees to buy of B., at a stated price, 100 bales of jute, to be delivered on the 1st of January. Afterwards, on the 15th of December, A. gives notice to B. that he will not accept the jute; on the 1st January the jute is tendered to A., who refuses to accept it.

A. must

A. must pay to B., by way of compensation, the excess, if any, of the contract price over the sum which B. could obtain for the jute on the 1st of January.

(*j.*) A., the owner of a boat, enters into an engagement by contract with B. to take a cargo of jute to Mirzapore, for sale at that place, starting on a specified day. The boat does not start at the time appointed, whereby the arrival of the cargo at Mirzapore is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B. by A. is the difference between the price which B. could have obtained for the cargo at Mirzapore at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*k.*) A. engages to repair B.'s house in a certain manner, and receives payment in advance. A. repairs the house, but not according to contract. B. is entitled to recover from A. the cost of making the repairs conform to the engagement.

(*l.*) A. agrees to let his ship to B. for a year, from the 1st of January next, for a certain price. Freights rise, and on the 1st of January the hire obtainable for the ship is higher than the contract price. A. breaks his engagement. He must pay to B., by way of compensation, a sum equal to the difference between the contract price and the hire, which could be obtained for the use of the ship on the 1st of January.

(*m.*) A. engaged to supply B. with a certain quantity of iron at a fixed price, being a higher price than that for which A. could procure and deliver the iron. B. wrongfully refused to receive the iron. B. must pay to A. by way of compensation the difference between the contract price of the iron and the sum for which A. could have obtained and delivered it.

(*n.*) A. delivers to B., a common carrier, a machine, to be conveyed, without delay, to A.'s mill, informing B. that his mill is stopped for want of the machine. B. unreasonably delays the delivery of the machine, and A. in consequence loses a profitable contract with the Government. A. is entitled to receive from B., by way of compensation, the average amount of profit which would have been made by the use of such machine during the time that delivery of it was delayed, but not to the loss sustained by not obtaining the Government contract.

(*o.*) A. having entered into an engagement with B. to supply B. with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, enters into an agreement with C. for the purchase of a certain quantity of iron at 80 rupees a ton, telling C. that he does so for the purpose of performing his engagement with B. C. fails to fulfil his engagement with A., who cannot procure other iron, and, in consequence, fails to fulfil his engagement with B. C. must pay to A. 20,000 rupees, being the profit which A. would have made by the performance of his engagement.

(*p.*) A. entered into an engagement with B. to make and deliver to B. by a fixed day, for a specified price, a certain piece of machinery. A. did not deliver the piece of machinery at the time specified, and in consequence of this B. was obliged to procure another, at a higher price than that which he was to have paid to A., and was prevented from fulfilling an engagement under which he lay to a third person at the time of his contract with A. (but which had not been then communicated to A.), and was compelled to make compensation for breach of his engagement. A. must pay to B., by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B. for another, but not the sum paid by A. to the third person by way of compensation.

(*q.*) A., a builder, undertakes to erect and finish a house by the 1st of January, in order that B. may give possession of it at that time to C., to whom B. has agreed to let it. A. is informed of the agreement between B. and C. A. builds the house so badly that before the 1st of January it falls down, and has to be rebuilt by B., who in consequence loses the rent which he was to have received from C., and is obliged to make compensation to C. for the breach of his engagement. A. must make compensation to B. for the cost of rebuilding the house, for the rent lost, and for the compensation made.

(*r.*) A. sells certain merchandise to B., warranting it to be of a particular quality, and B., in reliance upon this warranty, sells it to C. with a similar warranty. The warranties are broken, and B. becomes liable to pay C. a sum of money by way of compensation. B. is entitled to be reimbursed this sum by A.

(*s.*) A. engages to supply B. with a thrashing machine on the 15th of August; he is aware at the time of entering into the engagement that B. is in the habit of thrashing out his wheat in the field, and sending it off at once to market. A. did not supply the machine on the 15th of August, but assured B. from day to day that it would be delivered shortly. He delivered the machine on the 11th of September. In consequence of the non-delivery of the machine, it became necessary for A. to carry the wheat home and stack it; it was injured by exposure to the weather, and had to be dried at a great expense; its quality was much deteriorated, and before it could be sold the market price of wheat had fallen. B. in consequence of these events is unable to pay a judgment debt to C., who seizes and sells his property in execution. A. must make compensation to B. in respect of the expenses of carrying, stacking, and drying the wheat, and in respect of its deterioration in quality; but not in respect of the loss sustained by B. through the fall in the market price of wheat, nor in respect of the seizure of his property.

(*t.*) A. has entered into an engagement by contract to pay a sum of money to B. on a day specified. A. does not pay the money on the day appointed. B., in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A.

is not liable to make good to B. anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*u.*) A. engaged to deliver 50 maunds of saltpetre to B. on the 1st of January, at a certain price. B. afterwards, before the 1st of January, agreed to sell the saltpetre to C. at a price higher than the market price of the 1st of January. A. broke his engagement. In estimating the compensation payable by A. to B., the market price of the 1st of January, and not the profit which would have arisen to B. from the sale to C., is to be taken into account.

(*v.*) A. engaged to sell and deliver 500 bales of cotton to B. on a fixed day. A. broke his engagement, and B. having no cotton, was obliged to close his mill. A. is not responsible to B. for the loss caused to B. by the closing of his mill.

(*w.*) A. agreed to sell and deliver to B. on the 1st of January certain cloth which B. intended to manufacture into caps of a particular kind, for which there was no demand except at that season. The cloth was not delivered till long after the appointed time, and too late to be used that year in making caps. A. is entitled to receive from B., by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*x.*) A., a shipowner, agreed with B. to convey him from Calcutta to Sydney in A.'s ship, sailing on the 1st of January; and B. paid to A., by way of deposit, one-half of his passage money. The ship did not sail on the 1st of January, and B., after being in consequence detained in Calcutta for some time, and thereby put to some expense, proceeded to Sydney in another vessel, and in consequence, arriving too late in Sydney, lost a sum of money. A. is liable to repay to B. his deposit with interest, and the expense to which he was put by his detention in Calcutta, but not the sum of money which he lost by arriving in Sydney too late.

51. Specific performance of a contract is the doing or the delivery of the thing contracted for, as the case may be, according to the terms of the contract.

52. Where an engagement by contract has been made between any persons for the creation or transfer of any interest in immoveable property, or for the delivery of any specific article of moveable property, and the party who has entered into such engagement fails to perform it, the Court may, at the suit of any other party to the contract, order specific performance of the engagement, with or without compensation in respect of loss or damage caused by his default.

Explanation.—An agreement to cultivate land in a particular manner, or to grow particular crops, does not create such an interest in immoveable property as is contemplated by this section.

Illustration.

(*a.*) A. agrees with B. to sell him a house for 1,000 rupees. B. is entitled to a decree directing A. to convey the house to him, he paying the purchase money.

(*b.*) A. agrees with B. to give him a bill of lading of a certain cargo. B. is entitled to have the bill of lading signed by A.

(*c.*) A. agrees with B. to prepare and sow, and cultivate a field with indigo, and to deliver him the crop; when the crop is cut and ready for delivery, B. is entitled to have the crop delivered to him in specie; but he is not entitled to a decree directing A. to prepare, or sow, or cultivate.

(*d.*) A. agrees with B. that he will paint a picture for him, and the picture is painted. B. is entitled to have it delivered to him, but B. is not entitled to a decree ordering A. to paint or to complete the painting of the picture.

(*e.*) A. agrees with B. to edit a periodical work for the remuneration of 1,000 rupees per month. B. cannot enforce against A. the specific performance of this contract; and, as the rights and obligations are mutual, A. cannot enforce against B. the specific performance of this contract.

[*N.B.*—In this case either party can obtain compensation for the loss sustained by him by the failure of A. to perform his engagement.]

(*f.*) A. agrees with B. to deliver to him 40 chests of indigo at 1,000 rupees per chest. A. fails to perform his engagement. B. cannot obtain specific performance of the contract, but can obtain compensation for the loss sustained by him by reason of A.'s failure to complete the contract.

(*g.*) A. agrees with B. to sell him a house for 10,000 rupees, the price to be paid and possession given on the 1st of January 1865. A. fails to perform his engagement. B. brings his suit for specific performance, which is decided in his favour on the 1st of January 1866. The decree ought, besides ordering specific performance, to award to B. compensation for any loss or damage which he has sustained by A.'s refusal.

53. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of

of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the engagement as can be performed, and award compensation in money for the deficiency. In such case neither party shall be entitled to compensation for loss or damage caused by the neglect or default of the other party to perform the engagement.

Illustration.

A. agrees to sell B. a piece of land consisting of 100 biggahs. It turns out that 98 biggahs of the land belong to A. and the two remaining biggahs to a stranger, who refuses to part with them. A. may be directed at the suit of B. to convey to B. the 98 biggahs, and to make compensation to him for not conveying the two remaining biggahs; or B. may be directed, at the suit of A., to pay to A., on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

54. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, and the part which must be left unperformed forms a considerable portion of the whole, the party in default is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the engagement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the other party.

Illustrations.

(*a.*) A. agrees to sell to B. a piece of land consisting of 100 biggahs. It turns out that 50 biggahs of the land belong to A., and the other 50 biggahs to a stranger, who refuses to part with them. A. cannot obtain a decree against B. for the specific performance of the contract; but if B. is willing to pay the price agreed upon, and to take the 50 biggahs which belong to A., waiving all right to compensation either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a decree directing A. to convey those 50 biggahs to him on payment of the purchase-money.

(*b.*) A. agrees to sell to B. an estate with a house and garden for 100,000 rupees. It turns out that A. is unable to convey the garden. A. cannot obtain a decree against B. for the specific performance of the contract; but, if B. is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a decree, directing A. to convey the house to him on payment of the purchase money.

55. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the specific performance of a part of an engagement by contract.

56. It shall be competent to the Court to award compensation in cases where specific performance is sued for and the Court does not think fit to order it.

57. In every case the Court shall have power to give compensation in money in lieu of the specific performance of the contract, where it shall appear to the Court that specific performance would inflict damage or injury on one party to the contract without any corresponding benefit to the party seeking specific performance.

58. Where the specific performance of an engagement is ordered, and it appears to the Court that such specific performance ought to be made by a party by executing a conveyance, or by endorsing a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court for execution upon the proper stamp (if any is required by law) and the signature thereof by the judge, shall have the same effect as the execution or endorsement thereof by the party ordered to execute. Code of Civil Procedure, s. 202.

59. Where a contract contains an engagement express or implied, by one party, that he will abstain from doing any act, the Court may, at the suit of another party, issue an injunction to restrain the breach of such engagement, provided such other party has not failed to perform his own engagement.

Exception.—This section shall not apply to engagements relating to the cultivation of land or the growing particular crops.

Illustrations.

(*a.*) A. agrees with B. that he will sing at B.'s theatre for a twelvemonth. B. cannot have an order directing A. to sing, but he is entitled to have an order restraining A. from singing at any other place of entertainment.

(*b.*) B. agrees with A. that he will serve him faithfully for twelve months as a clerk. A. is not entitled to an order directing B. to serve, but he is entitled to an order restraining B. from serving a rival house, or doing any other act to the injury of A. in his business.

(*c.*) A. agrees with B. that in consideration of a sum of money to be paid to him by B. on a day fixed, he will not set up a certain business within a specified distance. B. makes default in payment of the money. A. cannot be restrained from carrying on business within the specified distance.

ON CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

60. WHERE a person has, either by words spoken or written, or by his conduct, led another to believe that a certain state of things exists which does not really exist, with the intention that the other shall act upon such belief in a transaction between them, and the other accordingly acts upon such belief, the person who has caused such belief is bound to place the other in the same position as if such a state of things had existed, or, in default, to make compensation to the other in respect of any loss or damage which he has incurred by acting upon such belief.

61. A person who, by a false representation, induces another to enter into a contract with a third party, is bound to make good the representation if he knew it to be false, or if in the due discharge of his duty he ought to have known it to be so.

Illustrations.

(*a.*) A. is trustee for B. of certain property. B. creates a charge upon the trust property, of which notice is given to A. B. afterwards enters into treaty with C. for the sale of the property. C. asks A. whether the property is incumbered or not. A. not remembering the notice, replies in the negative, and C. thereupon buys the property. A. as well as B. is responsible for the discharge of the incumbrance.

(*b.*) A. conveys his property to B., and permits him to appear as the owner of it, upon a secret trust for A.'s benefit. B. alienates the property to a person who is not aware of the trust. A. cannot dispute the alienation.

(*c.*) A. being applied to by B. for merchandise upon credit, asks C. whether B. is in good circumstances. C., knowing B. to be deeply in debt, with the intention of inducing A. to comply with B.'s wishes, replies that B. is in good circumstances. In consequence of this reply, A. lets B. have the merchandise on credit. B. becomes insolvent before the time for payment arrives. C. is liable to make good to A. the value of the merchandise.

(*d.*) C., without any particular knowledge of B.'s means, speaks of him in the presence of A. as a person in good circumstances. A. in consequence lets B. have merchandise on credit. B. becomes insolvent. C. is not liable to make good to A. the value of the merchandise.

62. If one person makes a deliberate statement as to his own future conduct to another, with the intent that it should be acted upon, and the other acts upon the faith of such assurance, the person who made the statement must make it good.

Illustration.

A. holding a decree against B., and knowing that B. is desirous to be married to C., assures the father of C. that he will never enforce the execution of the decree against B. C.'s father, relying on this assurance, permits the marriage to take place. A. is not entitled to enforce the execution of the decree.

63. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a.*) A. supplies B., a minor, with necessaries suitable to his condition in life. A. is entitled to be reimbursed from B.'s property.

(*b.*) A. supplies the wife and children of B., a lunatic, with necessaries suitable to their condition in life. A. is entitled to be reimbursed from B.'s property.

64. A person

64. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

A. holds some land in Bengal as zemindar. B. holds the land on a lease granted by A. The revenue payable by A. to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B.'s lease. B., to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A. is bound to make good to B. the amount so paid.

65. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore or to make compensation to the former in respect of the thing so done or delivered.

This rule shall apply, notwithstanding that there shall have been a larger contract between the parties, which has been put an end to by reason of a breach thereof.

Illustrations.

(*a.*) A., a tradesman, leaves goods at B.'s house by mistake. B. treats the goods as his own. He is bound to pay A. for them.

(*b.*) A. contracts with B. to deliver to him 250 maunds of rice before the 1st of May. A. delivers 130 maunds only before that day and none after. B. retains the 130 maunds after the 1st of May. He is bound to pay A. for them.

(*c.*) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B. engages to pay her 100 rupees for each night's performance; on the sixth night the singer wilfully absents herself from the theatre, and B. in consequence puts an end to the engagement. B. must pay A. for the five nights on which she had sung.

66. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee. *See* Sections on Bailments.

67. A person to whom money has been paid by mistake or under coercion is liable to repay it.

Illustration.

A. and B. jointly owe 100 rupees to C. A. alone pays the amount to C., and B., not knowing this fact, pays 100 rupees over again to C. C. is bound to repay the amount to B.

Sale of Goods.

68. In the following chapter the word "goods" is used to denote every kind of moveable property.

69. Sale is the exchange of anything which is property for a price. It involves the transference of the ownership of the thing sold from the seller to the buyer.

70. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods, together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery, or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Illustrations.

(*a.*) B. offers to buy A.'s horse for 500 rupees. A. accepts the offer, and tells B. to take away the horse. The horse has been sold to B.

(*b.*) A. sends goods to B., with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B. retains the goods, and informs A. that he approves of them. The goods have been sold to B.

(*c.*) B. offers A. for his horse 1,000 rupees, the horse to be delivered to B. on a stated day, and the price to be paid on another stated day. A. accepts the offer. The horse has been sold to B. by offer and acceptance with an agreement to postpone delivery and payment.

(*d.*) B. offers A. for his horse 1,000 rupees, on a month's credit. A. accepts the offer.

The horse has been sold to B. by offer and acceptance with an agreement to postpone the payment.

(*e.*) B., on the 1st January 1863, offers to A. for a quantity of rice 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A. accepts the offer. The rice has been sold to B.

71. By an agreement for the sale of a thing which has yet to be ascertained, made, or finished, no ownership of any portion of that thing passes to the buyer until it is ascertained, made, or finished.

Illustration.

B. orders A., a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B. pays to A. money from time to time on account of the price. The ownership of the barge does not pass to B. until it is finished.

72. Where by an agreement for the sale of goods the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustrations.

(*a.*) A., a shipbuilder, agrees to sell to B., for a stated price, a vessel which is lyin A.'s yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the agreement a sale is not effected until the vessel has been rigged, fitted up, and delivered.

(*b.*) A. contracts to build a ship for B. for a price, payable by instalments dependent on the progress of the building of the ship, and the ship is to be built under B.'s superintendence. The ownership of the materials incorporated with the ship passes to B. at the time of incorporation, as this was intended by the parties, but the materials lying in A.'s yard, though suited and intended for the ship, do not pass to B. until they are actually incorporated with the ship.

73. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a.*) A., owner of a stack of bark, agrees to sell it to B. at 100 rupees per ton; B. agrees to take and pay for it on a certain day. Part is weighed and delivered to B.; the ownership of the residue is not transferred to B. until it has been weighed pursuant to the contract.

(*b.*) A. agrees to sell a heap of clay to B. at a certain price per ton; B. is by the agreement to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A.'s ground to B.'s place of deposit. Here nothing more remains to be done by the seller, the sale is complete, and the ownership of the heap of clay is transferred at once.

74. Where the goods are not ascertained at the time of making the agreement for sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

A. agrees to sell to B. 20 tuns of oil in A.'s cisterns. A's cisterns contain more than 20 tuns of oil. B. has not acquired the ownership of any portion of the oil.

75. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A. having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, agrees to sell B. 20 hogsheads of it. After the agreement, A. fills 20 hogsheads with the sugar, and gives notice to B. that the hogsheads are ready, and requires him to take them away. B. says he will take them as soon as he can. By this appropriation by A. and assent by B., the ownership passes to B.

76. Where the goods are not ascertained at the time of making the agreement for sale, and by the terms of the agreement the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the agreement, and by his doing so the goods are ascertained.

Illustration.

B. agrees with A. to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice, out of a larger quantity in A.'s granary. It is agreed that B. shall send sacks for the rice, and that A. shall put the rice into them. B. does so, and A. puts 50 maunds of rice into the sacks. The goods have been ascertained.

77. Where

77. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transference of the immoveable property.

Illustration.

A. agrees with B. for the sale of a house and furniture. The ownership of the furniture does not pass to B. until the house is conveyed to B.

78. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

79. A buyer to whom the ownership of the goods sold has passed, is liable to bear any loss arising from the destruction or injury of the goods.

Illustration.

B. offers and A. accepts 100 rupees for a stack of firewood standing on A.'s premises, the firewood to be allowed to remain on A.'s premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A.'s premises, it is accidentally destroyed by fire. B. must bear the loss.

80. A valid agreement for the sale of goods may be made either by word of mouth or by writing.

81. The ownership of goods may be acquired by buying them from any person who is in possession of them, provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

Illustrations.

(*a.*) A. steals a cow from B., and sells it at a cattle market to C., a purchaser in good faith. A. is afterwards convicted of the theft. B. cannot recover the cow from C.

(*b.*) A., a person whose rank and occupation are not such as to account for his having plate in his possession, sells a piece of plate to B., without giving a satisfactory explanation of the manner in which he had become possessed of it. The plate had in fact been stolen from C. C., on proof of the theft, can recover the plate from B.

(*c.*) A., a commercial agent, to whom goods have been consigned with instructions not to sell them without reference to the consignor, sells them to B., who has no ground for a reasonable presumption that A. has no right to sell them. The consignor cannot disturb the sale.

(*d.*) A., a commercial agent, to whom goods have been consigned with instructions not to sell them without reference to the consignor, sells them, without such reference, to B., who is acquainted with the instructions given to A. The sale is void as against the consignor.

82. The ownership of goods may be acquired by buying them from any person who is in possession of a bill of lading, dock warrant, warehouse keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other documentary title to the goods, provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell the goods.

Illustration.

A. sells to B. goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C., and it has not been indorsed by C. The sale is not valid.

83. Under an agreement for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts which, after the goods are produced, are done in pursuance of the agreement by the seller, or by the buyer with the seller's assent.

Illustrations.

(*a.*) A. agrees to sell to B., for a stated price, all the indigo which shall be produced at A.'s factory during the ensuing year. A., when the indigo has been manufactured, gives to B. an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B. from the date of the acknowledgment.

(*b.*) A., for a stated price, agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement, B., with the assent of A., takes possession of some crops grown in succession to the crops standing at the time of the agreement. The ownership of the crops when taken vests in B.

(*c.*) A., for a stated price, agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement B. applies to A. for

 possession

possession of some crops grown in succession to the crops which were standing at the time of the agreement. A. refuses to give possession. The ownership of the crops does not pass to B.

84. An agreement for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the agreement, and though at that time he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A. agrees, on the 1st January, to sell B. 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A., at the time of making the agreement, is not in possession of any shares. The agreement is valid.

85. Where there has been a sale or an agreement to sell, and the amount of the price has not been fixed, it shall be determined by the consideration of what is just and reasonable.

Illustration.

B., living at Patna, orders of A., a coach builder, at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the amount of it must be determined by the consideration of what is just and reasonable.

86. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorised to hold them on his behalf.

Illustrations.

(*a.*) A. sells to B. a horse, and causes or permits it to be removed from A.'s stables to B.'s. This is a delivery.

(*b.*) B. in England, orders 100 bales of cotton from A., a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c.*) A. sells to B. certain specific goods which are locked up in a godown. A. gives B. the key of the godown in order that he may get the goods. This is a delivery.

(*d.*) A. sells to B. five specific casks of oil. The oil is in the warehouse of A. B. sells the five casks to C. A. receives warehouse rent for them from C. This amounts to a delivery of the oil to C., as it shows an assent on the part of A. to hold the goods as warehouseman of C.

(*e.*) A. sells to B. 50 maunds of rice in the possession of C., a warehouseman. A. gives B. an order to C. to transfer the rice to B., and C. assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f.*) A. agrees to sell B. five tuns of oil at 1,000 rupees per tun, to be paid for at the time of delivery. A. gives to C., a wharfinger, at whose wharf he had 20 tuns of the oil, an order to transfer five of them into the name of B. C. makes the transfer in his books, and gives A.'s clerk a notice of the transfer for B. A.'s clerk takes the transfer notice to B., and offers to give it him on payment of the bill. B. refuses to pay. There has been no delivery to B., as B. never assented to make C. his agent to hold for him the five tuns selected by A.

87. A delivery to a wharfinger or carrier of the goods sold, which do not reach the buyer, does not render the buyer liable for the price, unless the delivery is so made, as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.

Illustration.

B. at Agra, orders of A., who lives at Calcutta, three casks of oil, to be sent to him by railway. A. takes three casks of oil directed to B. to the railway station, and leaves them there without conforming to the rules, which must be complied with in order to render the railway company responsible for their safety. This is not a sufficient delivery to charge B. in a suit for the price, if the goods are not delivered to the buyer.

88. A delivery of part of the goods in progress of the delivery of the whole, has the same legal effect as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations.

(*a.*) A ship arrives in a harbour laden with a cargo consigned to A., the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A. in progress of the delivery of the whole. This is a delivery of the cargo to A.

(*b.*) A sells

(*b.*) A. sells to B. a stack of firewood, to be paid for by bill on delivery. After the sale, B. applies for and obtains from A. leave to take away some of the firewood. This has not the legal effect of delivery of the whole.

(*c.*) A. sells 50 maunds of rice to B. The rice remains in A.'s warehouse. After the sale, B. sells to C. 10 maunds of the rice, and A. at B.'s desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

89. In the absence of any special agreement, the seller of goods is not bound to deliver them until the buyer applies for possession.

90. In the absence of any agreement as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement for sale, or if not then in existence, at the place at which they are produced.

91. Unless a contrary intention appears by the agreement, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid.

92. Where by the agreement the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives A. the bill of exchange, but allows the sugar to remain in A.'s warehouse. Before the bill falls due B. stops payment. A. may retain the goods for the price.

93. Where by the agreement, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration.

A. sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives the bill of exchange, but allows the sugar to remain in the warehouse. The bill is dishonoured. A. may retain the goods for the price.

94. A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognised the title of the subsequent buyer.

Illustrations.

(*a.*) A. sells to B. at three months' credit, a chest of tea, then in the custody of X., a wharfinger. A. gives B. a delivery order for the tea, and before the expiration for the credit, B. resells the tea to C. for cash, and transfers to him the delivery order. B. stops payment before C. obtains possession under the order. A. may countermand the order to X., and retain the goods against C.

(*b.*) A. sells to B. a cargo of sugar, then in the warehouse of A. B., according to the terms of the sale, gives A. his acceptance at three months for the price of sugar. B. sells the sugar to C. for cash, and gives C. an order addressed to A., requesting him to deliver the sugar to C. A. assents to the delivery order, and agrees to hold for C. Afterwards B. becomes insolvent, and his acceptance is dishonoured. A. cannot retain the goods against C.

95. A seller who has parted with the possession of the goods, and has not received the whole price, may, in the event of the buyer becoming insolvent, stop the goods while they are in transit to the buyer.

96. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations.

(*a.*) B. living at Madras, orders goods of A., at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C. a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C., are in transit.

(*b.*) B., at Delhi, orders goods of A., at Calcutta. A. consigns and forwards the goods to B., at Delhi. On arrival there, they are taken to the warehouse of B., and left there. B. refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(*c.*) B., who lives at Poonah, orders goods of A., at Bombay. A. sends them to Poonah by C., a carrier, appointed by B. The goods arrive at Poonah, and are placed by C., at B.'s request, in C.'s warehouse for B. The goods are no longer in transit.

(*d.*) B., a merchant of London, orders 100 bales of cotton of A., a merchant at Bombay. B. sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

97. The right of stoppage does not cease on the buyer's re-selling the goods while in transit, and receiving the price; but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

98. The right of stoppage ceases, if the buyer, while the goods are in transit, assigns a bill of lading in respect of them to a second buyer in good faith for valuable consideration.

Illustrations.

(*a.*) A. sells and consigns certain goods to B. A. being still unpaid, B. becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C., who is not aware of his insolvency. A. cannot stop the goods in transit.

(*b.*) A. sells and consigns certain goods to B. A., being still unpaid, B. becomes insolvent, and while the goods are still in transit, assigns the bill of lading for cash to C., who knows that B. is insolvent. The assignment not being in good faith, A. may still stop the goods in transit.

99. Where a bill of lading is not negotiable until a certain condition has been fulfilled, the right of stoppage does not cease until such condition has been fulfilled.

Illustration.

A. sells and despatches goods to B., and sends him a letter enclosing the bill of lading and directing him not to part with it until he has accepted certain bills of exchange which A. has drawn against the consignment. B. without accepting the bills of exchange, assigns the bill of lading to a buyer in good faith, for a valuable consideration. A.'s right of stoppage does not cease upon such assignment.

100. Where a bill of lading is assigned by the buyer by way of pledge, to secure an advance which has been made upon it in good faith, the seller may, on payment or tender to the pledgee of the amount of his claim, stop the goods in transit.

Illustrations.

(*a.*) A. sells and consigns goods to B. of the value of 12,000 rupees. B. assigns the bill of lading for those goods to C. to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B. becomes insolvent, being indebted to C. to the amount of 9,000 rupees. A. is entitled to stop the goods on payment or tender to C. of 5,000 rupees.

(*b.*) A. sells and consigns goods to B. of the value of 12,000 rupees. B. assigns the bill of lading for those goods to C. to secure the sum of 5,000 rupees due from him to C. upon a general balance of accounts. B. becomes insolvent. A. is entitled to stop the goods in transit for the whole sum due to him.

101. Stoppage in transit may be effected by the seller, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

102. The notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has the possession. In the latter case, it must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

103. Stoppage

103. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A. sells to B. 100 bales of cotton; 60 bales having come into B.'s possession, and 40 being still in transit, B. becomes insolvent, and A. being still unpaid, stops the 40 bales in transit. A. is entitled to hold the 40 bales until the price of the 100 bales is paid.

104. Where the buyer fails to perform his part of the agreement, either by not taking the goods sold to him, or by not paying for them, the seller may re-sell them within a reasonable time after giving notice to the buyer of his intention to do so; and the buyer must bear any loss; but is not entitled to any profit which may occur on the re-sale.

105. If the buyer, or any person claiming under him, is by reason of the invalidity of the seller's title deprived of the thing sold, the seller is responsible to the buyer for loss thereby caused, unless a contrary intention appears by the agreement.

106. An implied warranty of goodness or quality may be established by the custom of any particular trade.

107. On the sale of provisions there is an implied warranty that they are sound.

108. On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample.

109. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk.

Illustrations.

(*a.*) A., at Calcutta, sells to B. 12 bags of "waste silk" then on its way from Moorshedabad to Calcutta. There is an implied warranty by A. that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b.*) A. sells parcels of "linseed oil," by sample, to B. [warranted only equal to sample.] There is an implied warranty by A. that the article sold is such as is known in the market as "linseed oil;" and if he delivers an article which, though equal to sample, is not such as is known in the market as linseed oil, there is a breach of the implied warranty.

(*c.*) A. sells to B. 40 casks of "oxalic acid," B. having before the sale seen the bulk of the acid, and inspected samples of it. The acid proves to be so adulterated as not to be the article known in commerce as "oxalic acid." There is here a breach of an implied warranty.

(*d.*) A., in London, where inland bills of exchange do, and foreign bills of exchange do not by law require a stamp, sells to B. a bill of exchange, unstamped, and purporting to be a foreign bill. There is an implied warranty by A. that the bill is a foreign bill, and if it turns out that the bill is not a foreign but an inland bill, there is a breach of that implied warranty.

110. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller, that the goods supplied are fit for that purpose.

Illustration.

B. orders of A., a copper manufacturer, copper for sheathing a vessel. A. on this order supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

111. Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration.

B. writes to A., the owner of a patent invention for cleaning cotton, "Send me your patent cotton-cleaning machine, to clean the cotton at my factory." A. sends the machine according to order. There is an implied warranty by A. that it is the article known as A.'s patent cotton-cleaning machine; but none that it is fit for the particular purpose of cleaning the cotton at B.'s factory.

112. In the absence of fraud and of any express warranty of quality the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it.

Illustration.

A. in good faith sells and delivers to B. scrip certificates of shares in a certain railway company. Afterwards the scrip is repudiated, on the ground that it had been issued without authority. A. is not responsible for loss sustained by B. in consequence.

113. Where a specific article has been sold with a warranty and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustration.

A. sells to B. a horse, warranted sound. The horse proves to have been unsound at the time of sale. B. is entitled to compensation from A. for loss caused by the unsoundness.

114. Where there has been an agreement for the sale of goods with a warranty, and the warranty is broken, the buyer may reject the goods on their being tendered to him, or may return them after the lapse of not more than a reasonable time for ascertaining the breach of warranty; provided that, beyond keeping them such time and examining or trying them, he does not exercise any act of ownership over them; or he may retain them. And, whichever course he follows, he is entitled to compensation from the seller for loss caused by the breach of warranty.

Illustrations.

(*a.*) A. agrees to sell to B. 200 bales of cotton by sample. Cotton not in accordance with sample is delivered to B. He may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b.*) B. agrees to buy of A. 25 sacks of flour, by sample. The flour is delivered to B., who pays the price. B., upon examination, finds it not equal to sample, and complains of this to A. B. afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price; but he is entitled to compensation from A. for any loss caused by the breach of warranty.

115. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered.

Illustration.

A. orders of B. specific articles of china. B. sends these articles to A. in a hamper, with other articles of china, which had not been ordered. A. may refuse to accept any of the goods sent.

116. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale.

117. The seller of goods is not entitled to rescind the agreement on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the agreement that he should be so entitled.

118. If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

INDEMNITY AND GUARANTEE.

119. A person can bind himself to save another person from eventual loss.

The security thus afforded is called indemnity when the loss guarded against is that which may be consequent upon the conduct of some person.

Illustrations.

(*a.*) A. gives B. a letter of indemnity against the consequences of any proceedings which C. may take against B. in respect of a certain sum of 200 rupees. Here A. binds himself

himself by an express engagement to save B. from consequent loss if C. shall act as contemplated.

(*b.*) B. accepts a bill of exchange, at A.'s request, for the accommodation of A. A. does not provide for the bill at maturity, and B. is compelled to pay it. A. is liable to B. for the amount of the bill. Here A. binds himself by an implied engagement to indemnify B. against loss consequent on a failure on A.'s part to provide for payment of the bill when due.

120. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Illustrations.

(*a.*) B., a stockbroker at London, and member of the Stock Exchange, at the request of A. buys for him 20 shares in the bank, "to be paid for on settlement day." Before the settlement day arrives, the bank stops payment, and A. repudiates the transaction, and tells B. not to pay the price. By the rules of the Stock Exchange, however, B. is compelled to pay the price on the settlement day. A. is liable to B. for the price on an implied agreement to indemnify.

(*b.*) B., at Singapore, under instructions from A. of Calcutta, contracts with C. to deliver certain goods to him. A. does not send the goods to B., and C. sues B. for breach of contract. B. informs A. of the suit, and A. authorizes him to defend the suit. B. defends the suit, and is compelled to pay damages and costs, and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

(*c.*) B., a broker at Calcutta, by the orders of A., a merchant there, contracts with C. for the purchase of 10 casks of oil for A. Afterwards A. refuses to receive the oil, and C. sues B. B. informs A., who repudiates the contract altogether. B. defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

121. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

Illustrations.

(*a.*) A., a decree holder, and entitled to execution of B.'s goods, requires the nazir to seize certain goods, representing them to be the goods of B. The nazir seizes the goods, and is sued by C., the true owner of the goods. A. is liable to indemnify the nazir for the sum he is compelled to pay to C., in consequence of obeying A.'s directions.

(*b.*) B., an auctioneer, at request of A., sells goods in the possession of A., but which A. had no right to dispose of. B. does not know this, and hands over the proceeds of the sale to A. Afterwards C., the true owner of the goods, sues B. and recovers the value of the goods and costs. A. is liable to indemnify B. for what he has been compelled to pay to C., and for B.'s own expenses.

(*c.*) A. employs B. to make a quantity of fire-bricks with a trade mark, which A. knows, but B. does not, to be the trade mark of C. B. makes and marks the bricks as ordered. C. obtains an injunction against B. A. is liable to pay B. the amount of his expenses.

122. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.

Illustrations.

(*a.*). A. employs B. to beat C., and agrees to indemnify him against all consequences of the act. B. thereupon beats C., and has to pay damages to C. for so doing. A. is not liable to indemnify B. for those damages.

(*b.*) B., the proprietor of a newspaper, publishes, at A.'s request, a libel upon C. in the paper, and A. agrees to indemnify B. against the consequences of the publication, and all costs and damages of any action in respect thereof. B. is sued by C. and has to pay damages, and also incurs expenses. A. is not liable to B. upon the indemnity.

123. Where a person holds an indemnity and an action is brought against him in respect of matters comprised in the indemnity, it is his duty to give notice to the person who is bound to indemnify him; and if that person does not authorise him to defend the action, he is at liberty to compromise it. Whether he defends the action under such authority as aforesaid, or in the absence of such authority compromises it, he is entitled to receive from the person bound to indemnify him the damages and costs which he has been compelled to pay.

If he defends the action without such authority, he is entitled to receive from the person bound to indemnify him the amount he has been compelled to pay,

exclusive of any expenses caused by his having defended the action; unless in defending it he has acted as a prudent man holding no indemnity would have acted in his own case.

Illustrations.

(*a.*) B., at the request of A., accepts a bill of exchange for the accommodation of A. C., the holder of the bill, sues B. upon it. B. has clearly no defence, but without the authority of A. he defends the suit, and has to pay costs as well as the amount of the bill. B. can only recover from A. the amount of the bill, upon A.'s implied promise to indemnify.

(*b.*) C., who holds a lease from W. of certain houses, assigns the lease to B., who agrees to indemnify and save harmless C. from all damages and expenses in respect of the breach of any of the covenants therein. B. re-assigns the lease to A., who gives a like indemnity to B. A. commits a breach of a covenant to repair. W. sues C. and recovers 2,000 rupees, and C. has to pay, in addition, 800 rupees as costs and expenses. C. sues B., who defends the suit unsuccessfully, and has to pay to C. the 2,800 rupees, and also incurs costs and expenses in the defence. A. is only liable to B. for 2,800 rupees, and not for the costs and expenses, as the amount of liability was ascertained by the suit of W. against C., and B. ought to have paid that amount at once to C. on demand.

124. An engagement to fulfil the liability of a third person in case of his default is called a guarantee when founded on sufficient consideration. The person who gives the guarantee is called the surety, the person primarily liable is called the principal, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

125. Anything which is done or agreed to be done for the benefit of the principal, and which is an inducement to the surety to give the guarantee, may be a sufficient consideration.

Illustrations.

(*a.*) B. requests A. to sell and deliver to him goods on credit. A. agrees to do so, provided C. will guarantee the payment of the price of the goods. C. agrees to guarantee the payment of the goods to be supplied. This is a good guarantee.

(*b.*) A. sells and delivers goods to B. C. afterwards requests A. to forbear to sue B. for the debt for a year, and promises that if he does so, C. will pay for them in default of payment by B.. A. agrees to forbear as requested. There is here a sufficient consideration to sustain C.'s guarantee.

(*c.*) A. sells and delivers goods to B. C. afterwards promises A. to pay for them in default of B. This is not a guarantee, as there is no consideration to support it.

126. An offer to guarantee does not constitute a guarantee until it is accepted by the person to whom it is made, and the acceptance is notified to the offerer.

127. The liability of the surety is co-extensive with that of the principal.

Illustration.

A. guarantees to B. the payment of a bill of exchange by C. the acceptor. The bill is dishonoured by C. A. is liable not only for the amount of the bill, but also for any interest which may have become due on it.

128. A guarantee may extend to a series of transactions, in which case it is called a continuing guarantee.

Illustrations.

(*a.*) A., in consideration that B. will employ C. in collecting the rents of B.'s zemindary, promises B. to be responsible to the amount of 5,000 rupees, for the due collection and payment by C. of those rents. This is a continuing guarantee.

(*b.* A. promises B., a tea dealer, to be responsible to the amount of 100 *l.* for any tea he may supply to C. B. supplies C. with tea to above the value of 100 *l.*, and C. pays B. for the same. Afterwards B. supplies C. with tea to the value of 200 *l.* C. fails to pay. The guarantee given by A. was a continuing guarantee, and he is accordingly liable to B. to the extent of 100 *l.*

(*c.*) A. agrees with B. to be answerable to him for the price of five sacks of flour to be delivered by B. to C., payable in one month. B. delivers five sacks to C. A. pays for them. Afterwards B. delivers four sacks to C., which C. does not pay for. The guarantee given by A. was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

See Act V. of 1866.

129. A continuing guarantee may be at any time revoked by the surety as to future transactions, by notice to the creditor.

Illustrations.

(*a.*) A., in consideration of B.'s discounting, at A.'s request, bills of exchange for C., guarantees to B. for 12 months the due payment of all such bills to the extent of 5,000 rupees. B. discounts bills for C. to the extent of 2,000 rupees. Afterwards, at the end of three months, A. revokes the guarantee. This revocation discharges A. from all liability to B. for any subsequent discount. But A. is liable to B. for the 2,000 rupees, on default of C.

(*b.*) A. guarantees to B., to the extent of 10,000 rupees, that C. shall pay all the bills that B. shall draw upon him. B. draws upon C. C. accepts the bill. A. gives notice of revocation. C. dishonours the bill at maturity. A. is liable upon his guarantee.

130. The death of the surety operates as a revocation of a continuing guarantee, so far as regards future transactions, in the absence of any agreement to the contrary.

131. Where, upon the face of the agreement, two persons are primarily liable to a third person, that liability is not affected so far as regards the third person by an arrangement between the two, that one of them shall be liable only upon the default of the other, even although such arrangement may have been known to the third person, unless he was a party to the arrangement.

Illustration.

A. and B. make a joint and several promissory note to C. A. makes it, in fact, as surety for B., and C. knows this at the time when the note is made. In a suit by C. against A. upon the note, the fact that A. made it as surety for B. and that C. knew it, is no answer to the action.

132. Any variance made without the surety's consent, in the terms of the original agreement, discharges the surety as to future transactions.

Illustrations.

(*a.*) A. becomes surety to C. for B.'s conduct as a manager in C.'s bank. Afterwards, B. and C. agree, without A.'s consent, that B.'s salary shall be raised, and that he shall become liable to one-fourth of the losses on discounts. B. allows a customer to overdraw, and the bank loses a sum of money. A. is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b.*) A. guarantees C. against the misconduct of B. in an office to which he is appointed by C., and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B. misconducts himself. A. is discharged from future liability under his guarantee by the change, though the misconduct of B. is in respect of a duty not affected by the later Act.

(*c.*) C. agrees to appoint B. as his clerk to sell coals at a yearly salary of 100 *l.*, upon A.'s becoming surety to C. for B.'s duly accounting for monies received by him as such clerk. Afterwards, without A.'s knowledge or consent, C. and B. agree that B. should be paid by a commission of 6 *d.* per ton on the coal sold by him instead of by the fixed salary. A. is not liable for subsequent misconduct of B.

(*d.*) A. gives to C. a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C. to B. on credit. Afterwards B. becomes embarrassed, and, without the knowledge of A., B. and C. agree that C. should continue to supply B. with oil for ready money, and that the payments should be applied to the then existing debts between B. and C. A. is not liable on his guarantee for any goods supplied after this new arrangement.

(*e.*) A. as surety for B., gives to C. a promissory note for 5,000 rupees upon an agreement that the 5,000 rupees should be paid by C. to B. "by draft at three months' date." C. without A.'s knowledge, pays the 5,000 rupees to B. at once, instead of giving a draft. A. is discharged from liability, as the agreement has been varied, and C. might sue B. for the money before the expiration of three months.

133. The surety is discharged by any agreement between the creditor and the principal, by which the principal is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal.

Illustrations.

(*a.*) A. gives a guarantee to C. for goods to be supplied by C. to B. C. supplies goods to B., and afterwards B. becomes embarrassed, and agrees with his creditors (including C.) to assign to them his property, in consideration of their releasing him from their demands. Here B. is released from his debt by agreement with C., and A. is discharged from his suretyship.

(*b.*) A. agrees with B. for a fixed price to build a house for B. within a stipulated time, B. supplying the necessary timber. C. guarantees A.'s performance of the contract. B. omits to supply the timber. C. is discharged from his suretyship.

 (*c.*) A. agrees

(*c.*) A. agrees with B. to grow a crop of indigo on A.'s land, and to deliver it to B. at a fixed rate, and C. guarantees A.'s performance of this agreement. B. diverts a stream of water which is necessary for the irrigation of A.'s land, and thereby prevents him from raising the indigo. C. is no longer liable on his guarantee.

134. An agreement between the creditor and the principal, by which the creditor makes a composition with, or agrees to give time to, or not to sue, the principal, discharges the surety.

Illustrations.

(*a.*) C., the holder of an overdue bill of exchange drawn by A. as surety for B., and accepted by B., binds himself by a valid agreement with B., to give time to B., A. not assenting to the agreement. A. is discharged from liability on the bill.

(*b.*) C., to whom B. owes a debt guaranteed by A., binds himself by agreement with B. not to sue B., and to accept 5 *s.* in the pound in respect of B.'s debts. A. assents to the arrangement. A. is not discharged, and is liable to C. for the whole debt.

135. Where an agreement to give time to the principal is made by the creditor with a third person, and not with the principal, the surety is not discharged.

Illustration.

C., the holder of an overdue bill of exchange, drawn by A. as surety for B., and accepted by B., binds himself by a valid agreement with M. to give time to B. A. has no knowledge of this agreement. A. is not discharged.

136. Mere forbearance on the part of the creditor to sue the principal, or to enforce any other remedy, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B. owes to C. a debt guaranteed by A. The debt becomes payable. C. does not sue B. for a year after the debt has become payable. A. is not discharged from his suretyship.

137. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

138. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal is thereby impaired, the surety is discharged.

Illustrations.

(*a.*) B. agrees to build a ship for C. for a given sum, to be paid by instalments as the work reaches certain stages. A. becomes surety to C. for B.'s due performance of the agreement. C., without the knowledge of A., prepays to B. the last two instalments. A. is discharged by this payment.

(*b.*) B. agrees with C. to complete certain fittings in C.'s warehouse for 8,000 rupees, C. stipulating to insure, from time to time, the fittings from fire, and to deduct the costs of the insurance from the 8,000 rupees. A. knowing of this agreement, guarantees B.'s due performance of the work. C. never insures, and fittings to the value of 7,000 rupees are destroyed by fire at B.'s shop. B. becomes insolvent, and it costs C. 9,000 rupees to complete the work. A. is discharged by C.'s omission to insure, not merely to the extent of the benefit he would have derived from the insurance if it had been effected, but altogether.

(*c.*) C. lends money to B. on the security of a joint and several promissory note made in C.'s favour by B., and by A. as surety for B., together with a bill of sale of B.'s furniture, which gives power to C. to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently, C. sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A. is discharged from liability on the note.

(*d.*) A. puts M. as apprentice to B., and gives a guarantee to B. for M.'s fidelity. B. covenants on his part that he will, at least once a month, see M. make up the cash. B. omits to see this done as agreed, and M. embezzles. A. is not liable to B. on his guarantee.

139. Where a guaranteed debt has become due, or default of the principal to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal.

140. A surety

140. A surety is entitled to the benefit of every security which the creditor has against the principal at the time the contract is entered into, whether the surety knows or does not know of the existence of such security; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a.*) C. advances to B., his tenant, 2,000 rupees on the guarantee of A. C. has also a further security for the 2,000 rupees by a mortgage of B.'s furniture. C. cancels the mortgage. B. becomes insolvent, and C. sues A. on his guarantee. A. is discharged from liability to the amount of the value of the furniture.

(*b.*) C., a creditor, whose advance to B. is secured by a decree, receives also a guarantee for that advance from A. C. afterwards takes B.'s goods in execution under the decree, and then, without the knowledge of A., withdraws the execution. A. is discharged.

(*c.*) A., as surety for B., makes a bond jointly with B. to C., to secure a loan from C. to B. After the date of this transaction, C. obtains from B. a further security for the same debt. Subsequently C. gives up the further security. A. is not discharged.

141. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Illustrations.

(*a.*) B. owes C. 800 *l.* C. agrees to advance B. 2,000 *l.* on his obtaining a surety for that amount. It is also agreed between B. and C. that the 800 *l.* should be deducted from that sum. The agreement, which is in writing, states that C. had agreed to advance B. 2,000 *l.*, and that the 800 *l.* had been repaid: this agreement is read to A. in C.'s presence, but nothing more is said, when A. gives a promissory note for 2,000 *l.* as surety for B. A. is discharged from liability on the note, as there is a false representation to A. that the 800 *l.* had been repaid, and that the whole sum of 2,000 *l.* was to be advanced to B.

(*b.*) C. represents to A. that he is liable to D. for 3,000 rupees, as surety for A. and B. A. thereupon concurs as surety in a mortgage security given by B. in order to indemnify C. C., in fact, was not liable to D. as alleged. A. is not bound by the security.

142. Any guarantee which the creditor has obtained by means of the concealment of a material circumstance, is invalid.

Illustrations.

(*a.*) A. engages B. as clerk to collect money for him. B. fails to account for some of his receipts, and A. in consequence calls upon him to furnish security for his duly accounting. C. gives his guarantee for B.'s duly accounting. A. does not acquaint C. with B.'s previous conduct. B. afterwards makes default. The guarantee is invalid.

(*b.*) A. guarantees to C. payment for iron to be supplied by him to B. to the amount of 2,000 tons. B. and C. have privately agreed that B. should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A. is not liable as a surety.

143. Where a person gives a guarantee upon an agreement that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

144. In every contract of guarantee there is an implied agreement by the principal debtor to idemnify the surety, and the surety is entitled to recover from the principal whatever sum he has rightly paid under the guarantee.

Illustrations.

(*a.*) B. is indebted to C., and A. is surety for the debt. C. demands payment from A., and on his refusal sues him for the amount. A. defends the suit, at the request of B., having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B. the amount paid by him for costs, as well as the principal debt.

(*b.*) C. lends B. a sum of money, and A., at the request of B., accepts a bill of exchange drawn by B. upon A. to secure the amount. C., the holder of the bill, demands payment of it from A., and on A.'s refusal to pay, sues A. upon the bill. A. defends the suit, and has to pay the amount of the bill and costs. He can recover from B. the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c.*) A. guarantees to C., to the extent of 2,000 rupees, payment of rice to be supplied by C. to B. C. supplies to B. rice to a less amount than 2,000 rupees, but obtains from A.

payment of the sum of 2,000 rupees, in respect of the rice supplied. A. cannot recover from B., more than the price of the rice actually supplied.

145. Where two or more persons are co-sureties for the same debt or duty either jointly or severally, and whether under the same or different agreements, and whether with or without the knowledge of each other, the co-sureties, in the absence of any agreement to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal.

Illustrations.

(*a.*) A., B., and C. are sureties to D. for the sum of 3,000 rupees lent to E. E. makes default in payment. A., B., and C. are liable as between themselves to pay 1,000 rupees each.

(*b.*) A., B., and C. are sureties to D. for the sum of 1,000 rupees lent to E., and it is arranged between A., B., C., and E. that A. is to be responsible to the extent of ¼, B. to the extent of ¼, and C. to the extent of ½. E. makes default in payment. As between the sureties, A. is liable to pay 250 rupees, B. 250 rupees, and C. 500 rupees.

146. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a.*) A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 30,000 rupees. A., B., and C. are each liable to pay 10,000 rupees.

(*b.*) A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 40,000 rupees. A. is liable to pay 10,000 rupees, and B. and C. 15,000 rupees each.

(*c.*) A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 70,000 rupees. Each has to pay the full penalty of his bond.

LAW OF BAILMENT.

147. The delivery of goods by one person to another for some purpose, upon an agreement, that it shall be delivered by the latter back to or according to the directions of the former when the purpose shall have been accomplished, is called a bailment. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee.

148. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

149. The bailor is bound to disclose to the bailee faults in the goods bailed which materially interfere with the use of them, or expose the bailee to extra-ordinary risks; and if he does not make such disclosure he is responsible for damage arising to the bailee directly from such faults.

Illustration.

A. lends a horse to B. which he knows to be vicious. He does not disclose the fact that the horse is vicious. The horse runs away. B. is thrown and injured. A. is responsible to B. for damage sustained.

150. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would take of his own goods.

151. The bailee, in the absence of any agreement to the contrary, is not responsible for the loss, destruction, or deterioration of the thing bailed, if not caused by his fault.

152. If the bailee does any act with regard to the goods bailed which is inconsistent with the conditions of the bailment, such act is, at the option of the bailor, a termination of the bailment.

Illustration.

A. lets to B. for hire, a horse for his own riding. B. drives the horse in his carriage. This is at the option of A. a termiaation of the bailment.

153. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(*a.*) A. lent a horse to B. for his own riding only. B. allowed C., a member of his family, to ride the horse. C. rode with care, but the horse accidentally fell and was injured. B. is liable to make compensation to A. for the injury done to the horse.

(*b.*) A. hired a horse in Calcutta from B. to ride to Benares. A. rode with due care, but rode to Cuttack instead. The horse accidentally fell and was injured. A. is liable to make compensation to B. for the injury to the horse.

154. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest in proportion to their respective shares in the mixture thus produced.

155. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expense of separation, and any damage arising from the mixture.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, so that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

157. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

158. Where the bailment is gratuitous, the bailor is entitled at any time upon reasonable notice to the restoration of the goods bailed.

159. The bailee must return the goods bailed without demand as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

160. If, by the fault of the bailee, the goods are not delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

161. The bailment, where gratuitous, is terminated by the death either of the bailor or of the bailee.

162. In the absence of any agreement to the contrary, the bailee is bouud to deliver to the bailor or according to his directions any increase or profit which may have accrued from the goods bailed.

Illustration.

A. leaves a cow in the custody of B., who takes care of it gratuitously. The cow has a calf. B. is bound to deliver the calf as well as the cow to A.

163. The bailor is responsible to the bailee for any loss which he may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

164. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

165. If the bailor has no title to the goods, and the bailee delivers them back

to or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery.

166. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

167. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he has a right to retain the goods against the owner until he receives such compensation; and where the owner offers a specific reward for the return of goods lost, the finder has a right to retain them until he receives the reward.

168. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill on the goods bailed, he has, in the absence of any agreement to the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them.

Illustrations.

(*a.*) A. delivers a rough diamond to B., a jeweller, to be cut and polished, which is accordingly done. B. is entitled to retain the stone till he is paid for the services he has rendered.

(*b.*) A. gave some cloth to B., a tailor, to make into a coat. A. agreed with B. that the coat should be delivered as soon as it was finished, and that three months' credit should be given for the price. B. is not entitled to retain the coat until he is paid.

169. In the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain any goods bailed to them as a security for a general balance of account.

170. The bailment of goods as security for payment of a debt or performance of an engagement is called pledge. The bailor is in this case called the pawnor. The bailee is called the pawnee.

171. The pawnee may retain the goods pledged not only for payment of the debt or the performance of engagement, but for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

172. The pawnee shall not retain the goods pledged for any other debt or engagement than the debt or engagement for which they are delivered, except by agreement between the parties; but such agreement in the absence of anything to the contrary will be presumed in regard to subsequent advances made by the pawnee.

173. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

174. If the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or engagement, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale. If the proceeds of the sale are less than the amount due in respect of the debt or engagement, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

175. If a time is stipulated for the payment of the debt or performance of the engagement for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them.

176. A person who is in possession of goods, or of any bill of lading, dock warrant, warehouse keepers' certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents, provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

177. Where

177. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

178. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might use in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

179. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

Agency.

180. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom the act is done, or who is so represented, is called the principal.

181. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

182. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

183. No consideration is necessary to create an agency.

184. The authority of an agent may be expressed or implied.

185. An authority is said to be expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A. owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B., and he is in the habit of ordering goods from C. in the name of A. for the purposes of the shop, and of paying for them out of A.'s funds with A.'s knowledge. B. has an implied authority from A. to order goods from C. in the name of A. for the purposes of the shop.

186. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act; and an agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Illustrations.

(*a.*) A. is employed by B., residing in London, to recover at Bombay a debt due to B. A. may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b.*) A. constitutes B. his agent to carry on his business of a shipbuilder. B. may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

187. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

(*a.*) A ship is driven on shore. The master has authority to hire men and boats to get her off, and to incur all necessary expenses for re-fitting her.

(*b.*) A. consigns provisions to B. at Calcutta, with directions to send them immediately to C. at Cuttack. B. may sell the provisions at Calcutta if they will not bear the journey without spoiling.

188. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a.*) A. buys goods from B., knowing that he is an agent for their sale, but not knowing who is the principal. B.'s principal is the person entitled to claim from A. the price of the goods, and A. cannot set off against that claim a debt due to himself from B.

(*b.*) A. being B.'s agent with authority to receive money on his behalf, receives from C. a sum of money due to B. C. is discharged of his obligation to pay the sum in question to B.

189. Where an agent does more than he is authorized to do, what he does within the scope of his authority, if it can be separated from what is beyond that scope, is binding as between the principal and the agent; the rest not.

Illustration.

A., being owner of a ship and cargo, authorizes B. to procure an insurance for 4,000 rupees on the ship. B. procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A. is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

190. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the whole is void as against the principal.

Illustration.

A. authorizes B. to buy 500 sheep for him. B. buys 500 sheep and 200 lambs for one sum of 6,000 rupees. The whole transaction is void as against A.

191. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

192. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally.

193. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

The agent is responsible to the principal for the acts of the sub-agent.

The sub-agent is responsible for his acts to the agent but not to the principal, except in cases of fraud or wilful wrong.

194. Where an agent has appointed a person to act as a sub-agent without having authority to do so, the agent stands towards that person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

195. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly; such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a.*) A. directs B., his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B. names C., an auctioneer, to conduct the sale. C. is not a sub-agent, but is A.'s agent for the conduct of the sale.

(*b.*) A., a merchant in Calcutta, consigns goods to B., a merchant in London, and directs him to sell the goods. B. appoints C., a broker, to sell the goods for A. C. is not a sub-agent, but is agent for A.

(*c.*) A. appoints B., a merchant in Calcutta, his attorney, for the purpose of recovering the monies due to A. from C. & Co. B. instructs D., a solicitor, to take legal proceedings against C. & Co. for the recovery of the money. D. is not a sub-agent, but is solicitor for A.

196. In

196. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a.*) A. directs B. to buy and ship a cargo of indigo for him, and to have the cargo properly insured. B. employs an insurance broker of good reputation, who effects an insurance on the cargo. The ship, having the cargo on board, is lost; but owing to the omission of some usual stipulations in the policy of assurance the underwriters refuse to pay the sum insured. B. is not responsible to A. for the loss, but the insurance broker is.

(*b.*) B., the agent of A., employs an auctioneer in good credit to sell goods of A., and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B. is not responsible to A. for the proceeds.

197. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind. When the agent adopts a different course, if any loss be sustained he must make it good to his principal, and if any profit accrues he must account for it.

Illustrations.

(*a.*) A., an agent engaged in carrying on for B. a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such investment. A. must make good to the principal the interest usually obtained by such investments.

(*b.*) B., a broker, in whose business it is not the custom to sell on credit, sells goods of A. on credit to C., whose credit at the time was very high. C., before payment, becomes insolvent. B. must make good the loss to A.

198. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business; unless the principal has notice of his want of skill. The agent is always bound to act with diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(*a.*) A., a merchant in Calcutta, has an agent B. in London, to whom a large sum of money is paid on A.'s account. B. improperly retains the money for a considerable time. A., in consequence of not receiving the money, becomes bankrupt. B. is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, but not further.

(*b.*) A., an agent for the sale of goods, having authority to sell on credit, sells to B. on credit, without making the proper and usual inquiries as to the solvency of B. B., at the time of such sale, is insolvent. A. must make compensation to his principal in respect of any loss thereby sustained.

(*c.*) A., an insurance broker employed by B. to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A. is bound to make good the loss to B.

(*d.*) A., a merchant in England, directs B., his agent at Bombay, to send him 100 bales of cotton by a certain ship. B., having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B. is bound to make good to A. the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

199. An agent is bound to render proper accounts to his principal on demand.

200. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

201. If a person who is an agent deals on his own account in the business of the agency without first obtaining the consent of the principal, and acquainting him with all matters which have come to his own knowledge on the subject, the

principal is at liberty, on discovering such circumstances, either to adopt or to repudiate the transaction.

Illustrations.

(*a.*) A. directs B. to sell A.'s estate. B. buys the estate for himself, in the name of C. A., on discovering that B. has bought the estate for himself, may either repudiate or adopt the sale at his option.

(*b.*) A. directs B. to sell A.'s estate. B. on looking at the estate before selling it, finds a mine on the estate which is unknown to A. B. informs A. that he wishes to buy the estate for himself, but conceals the discovery of the mine. A. allows B. to buy, in ignorance of the existence of the mine. A., on discovering that B. knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

202. An agent dealing on his own account with his principal in the business of the agency is not entitled to any remuneration as agent notwithstanding that the principal adopts the transaction.

Illustration.

A. agrees that if B. will find a purchaser for his land in Bombay at 2 rupees a yard, A. will give B. 5 per cent. commission. B. afterwards buys on his own account, and A. adopts the contract. B. is not entitled to any commission.

203. If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A. directs B. to buy a certain house for him. B. tells A. it cannot be bought, and buys the house for himself. A. may, on discovering that B. has bought the house, compel him to sell it to A. at the price he gave for it.

204. An agent may retain out of any sums received on account of the principal in the business of the agency all monies due to himself in respect of advances made or expenses incurred by him in conducting such business, and also such compensation as may be payable to him for acting as agent.

205. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

206. In the absence of any agreement to the contrary, remuneration in respect of the performance of any act is not due to the agent until the completion of such act.

207. An agent who is guilty of gross misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Illustrations.

(*a.*) A. employs B. to recover 100,000 rupees from C., and lay it out on good security. B. recovers the 100,000 rupees, and lays out 90,000 rupees on good security, but lays out 10,000 rupees on insufficient security, whereby A. loses 2,000 rupees. B. is entitled to remuneration for recovering the 100,000 rupees, and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b.*) A. employs B. to recover 1,000 rupees from C. Through B.'s misconduct the money is not received. B. is entitled to no remuneration for his services, and must make good the loss.

208. In the absence of any agreement to the contrary, an agent is entitled to retain goods, papers, and other property of the principal committed to his charge, until the amount due to himself for commission, disbursements, and services in repect of the same has been paid or accounted for to him.

209. Where acts are done by one person on behalf of another, but without his knowledge, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

210. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustration.

A., without authority, buys goods for B.; afterwards sells them to C. on his own account. B.'s conduct implies a ratification of the purchase made for him by A.

211. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

212. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

213. An act done without authority, which if done with authority would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Illustration.

(*a.*) A., an unauthorised person, requires on account of B., the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B. so as to make the holder liable for damages for default.

(*b.*) A. holds a lease from B. terminable on three months' notice. C., an unauthorised person, gives notice of termination to A. The notice cannot be ratified so as to be binding on A.

214. Any notice given to, or information obtained by, the agent, provided it be given or obtained in the course of the business transacted by him for the principal, will, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

Illustrations.

(*a.*) A. is employed by B. to buy certain goods from C., and buys them accordingly. In the course of the treaty for the sale A. learns that the goods really belonged to D., but B. is ignorant of that fact. B. is not entitled to set off a debt owing to him from C. against the price of the goods.

(*b.*) A. is employed by B. to buy goods from C. A. was, before he was so employed, a servant of C., and then learnt that the goods really belonged to D., but B. is ignorant of that fact. In spite of the knowledge of his agent, B. may set off against the price of the goods a debt owing to him from C.

215. In the absence of any agreement to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Explanation.—Such an agreement may be implied in the following cases:—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.

(2.) Where the agent does not disclose the name of his principal.

(3.) Where the principal, though disclosed, cannot be sued.

216. Where one man enters into an engagement by contract with another, having no knowledge or reasonable ground of suspicion that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A., who owes 500 rupees to B., sells 1,000 rupees' worth of rice to B. A. is acting as agent for C. in the transaction, but B. has no knowledge nor reasonable ground of suspicion that such is the case. C. cannot compel B. to take the rice without allowing him to set off A.'s debt.

217. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A. enters into a contract with B. to sell him 100 bales of cotton, and afterwards discovers that B. was acting as agent for C. A. may sue either B. or C., or both, for the price of the cotton.

218. A person who enters into a contract with an agent, if he afterwards induces the agent to do any act in the belief that the principal will be held exclusively liable on the contract, cannot hold the agent liable; and in like manner if he induces the principal to do any act in the belief that the agent will be held exclusively liable, he cannot hold the principal liable.

Illustration.

A., in Bombay, agrees as agent for B., a merchant in London, to buy 100 bales of cotton from C. C. intimates to B. that he intends to hold A. exclusively liable for the price of the cotton, and B., relying upon this intimation, settles his account with A., giving A. credit for the price of the cotton. A. afterwards becomes bankrupt without having paid the price of the cotton to C. C. cannot hold B. liable for the price of the cotton.

219. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other, according to the rules laid down in the chapter on contracts, sect. 63, in respect of any loss or damage which he has incurred by so dealing.

220. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

221. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he had by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a.*) A. consigns goods to B. for sale, and gives him verbal instructions not to sell under a fixed price. C., being ignorant of B.'s instructions, enters into an agreement with B. to buy the goods at a price lower than the reserved price. A. is bound by the agreement.

(*b.*) A. knows that B. is an agent of C., and acting under written instructions from C., but makes an agreement with B. as C.'s agent without asking to see the instructions. The terms of the agreement are contrary to the instructions. C. is not bound by the agreement.

222. The master of a ship has not as such any authority to sign bills of lading without receiving the goods to which they refer.

223. A master is bound to make compensation to third persons for injuries caused by the negligence or unskilfulness of his servant acting as such; but not for his wilful misconduct.

Illustrations.

(*a,*) A.'s coachman, driving A.'s carriage on A.'s business, strikes B.'s horses, not wantonly, but in order to extricate himself from a difficulty, and causes the horses to run away, in consequence of which B.'s carriage is overturned and broken. A. is liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(*b.*) A.'s coachman, driving A.'s coach on A.'s business, wantonly strikes B.'s horses, which run away, in consequence of which B.'s carriage is overturned and broken. A. is not, but his coachman is, liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(*c.*) The commander of A.'s ship, navigating the ship on A.'s business, through negligence runs over B.'s boat. A. is liable to make compensation to B. in respect of loss or damage caused to him thereby.

(*d.*) The commander of A.'s ship, navigating the ship on A.'s business, intentionally runs over B.'s boat. A. is not, but the commander is, liable to make compensation to B. in respect of loss or damage caused to him thereby.

(*e.*) A.'s coachman, driving A.'s coach, but not on A.'s business, through negligence runs over B., who thereby sustains severe bodily injury. A. is not, but the coachman is, liable to make compensation to B. in respect of such injury.

(*f.*) A. employs B. to act as conductor of his omnibus. C. enters the omnibus, and, having behaved improperly there, is removed by B. with unnecessary violence. In consequence of B.'s violence, C. is seriously injured. A. is not, but B. is, liable to make compensation to C. in respect of the effects of such injury.

(*g.*) A. was in the habit of buying corn, and directing the vendor to deliver it at B.'s wharf, and of paying for the corn on the production of the receipt of B. or his servant. B.'s servant, whose duty it was to receive the corn, and give receipts for it on behalf of B., gave C. a receipt for corn that had never been delivered, and thus enabled C. to obtain money from A. B. is not liable to make compensation to A. in respect of the loss caused to him by the conduct of B.'s servant.

224. A person

224. A person who employs another to do a lawful act, otherwise than as a servant, is not responsible for injuries caused to third persons in the doing of that act by the negligence or unskilfulness of the person employed, except in any case where the injuries may have been caused by conduct which the employer had authorised or adopted.

Illustrations.

(*a.*) A. employs B., a builder, to pull down and rebuild A.'s house. In consequence of the negligence of B.'s workmen in pulling down the house, the front of C.'s house, which adjoins A.'s, falls down. A. is not liable to make good the loss to C., but B. is.

(*b.*) A. employs B., a builder, to execute certain alterations in a house, including the preparation and fixing of gas fittings. B. makes a sub-contract with C., a gas fitter, to execute this part of the work. D. is injured by an explosion of gas, caused by C.'s negligence. C. is, but A. and B. are not, liable to make compensation to D. in respect of such injury.

225. A person who is bound to do any act is responsible for all injuries arising from the non-performance of such act, although he may have employed another to do it.

Illustrations.

(*a.*) A. is bound to repair the wall of his house, which is in a dangerous state. He employs B. to repair it. B. omits to do so. The wall falls down; and in doing so draws with it a part of an adjoining house belonging to C. A. is liable to make good the loss to C.

(*b.*) A. is bound to cover in a drain in front of his house, and employs B. to do so. B. neglects to cover in the drain; in consequence of B.'s negligence, C. falls into the drain, and is hurt. A. must make compensation to C.

226. A person employing another to do any act is bound to make compensation to third persons in respect of injuries caused directly by such act.

Exception.—Where two persons are engaged as agents or servants to the same master for a common object, the master is not bound to make compensation to one servant in respect of loss or damage arising from the misconduct, negligence, or want of skill of the other, unless he neglected to use ordinary care in the selection of the servant who has caused the injuries.

Illustrations.

(*a.*) A. employs B. to build a house according to a particular plan. The house cannot be built without obscuring the lights of a neighbour's house. The house is built accordingly. A. is liable to make good the loss or damage thereby sustained by the neighbour.

(*b.*) The guard of a train is injured through the neglect of the platelayers to keep the line in proper order. Ordinary care had been used in the selection of the platelayers. The railway company is not liable to indemnify the guard.

227. The master must make compensation to his agent or servant in respect of injury caused to such agent or servant by the master's neglect or want of skill.

Illustration.

A. employs B. as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B. is in consequence hurt. A. must make compensation to B.

228. The principal cannot retain any profit resulting from the fraud of his agent, although such fraud has been unauthorised by or unknown to the principal.

229. An agent is not responsible to third persons for injuries to them arising from his neglect of duty, but he is bound to make compensation to his employer against all sums paid by him on account of such injuries.

Illustration.

A. is bound to cover in a drain in front of his house, and employs B. to do so. B. neglects to cover in the drain; in consequence of B.'s negligence, C. falls into the drain, and is hurt. B. is not liable to make compensation to C.; but B. must make compensation to A. in respect of any compensation which A. has been compelled to make to C.

230. An agent is in all cases responsible to third persons for wrongful acts done by him, though such acts may have been previously commanded or subsequently ratified by his employer.

231. An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

232. Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot be terminated to the prejudice of such interest.

Illustrations.

(*a.*) A. gives authority to B. to sell A.'s land, and to pay himself out of the proceeds the debts due to him from A. A. cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b.*) A. consigns 1,000 bales of cotton to B., who has made advances to him on such cotton, and desires B. to sell the cotton, and to repay out of the price the amount of his own advances. A. cannot revoke this authority, nor is it terminated by his insanity or death.

233. The principal may (save as is otherwise provided by the last preceding section) revoke the authority given to his agent, at any time before the authority has been exercised so as to bind the principal.

234. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a.*) A. authorises B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in his hands. B. buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A. cannot revoke his authority so far as regards payment for the cotton.

(*b.*) A. authorises B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in B.'s hands. B. buys 1,000 bales of cotton in A.'s name, and so as not to render himself personally liable for the price. A. can revoke B.'s authority to pay for the cotton.

235. If it has been agreed expressly or by implication that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

236. Reasonable notice must be given of such revocation or renunciation, or the damage thereby resulting to the principal or the agent, as the case may be, must be made good to him by the other.

237. Revocation and renunciation may be expressed, or may be implied in the conduct of the principal or agent respectively.

Illustration.

A. empowers B. to let A.'s house. Afterwards A. lets it himself. This is an implied revocation of B.'s authority.

238. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations.

(*a.*) A. directs B. to sell goods for him, and agrees to give B. 2 per cent. commission on the price fetched by the goods. A. afterwards by letter revokes his authority. B., after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A., and B. is entitled to two rupees as his commission.

(*b.*) A., at Madras, by letter directs B. to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B. to send the cotton to Madras. B. after receiving the second letter enters into a contract with C., who knows of the first letter but not of the second, for the sale to him of the cotton. C. pays B. the money, with which B. absconds. The contract is binding on A.

239. When

239. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take all reasonable steps for the protection and preservation of the property entrusted to him.

Illustrations.

(*a.*) A. in London consigns to his agent B. at Calcutta for sale a cargo of porcelain. A. dies. B.'s duty, under ordinary circumstances, is to warehouse and retain the porcelain.

(*b.*) A. in New York consigns to B. in Calcutta for sale a cargo of ice. A. dies. It is B.'s duty to sell the ice as soon as possible.

240. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

Partnership.

241. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

Persons who have entered into partnership with one another are called collectively a firm.

Illustrations.

(*a.*) A. and B. buy 100 bales of cotton, which they agree to sell for their joint profit; A. and B. are partners in respect of such cotton.

(*b.*) A. and B. buy 100 bales of cotton, agreeing to share it between them. A. and B. are not partners.

(*c.*) A. agrees with B., a goldsmith, to buy and furnish gold to B., to be worked up by him, and sold, and that they shall share in the profits. A. and B. are partners.

(*d.*) A. and B. agree to work together as carpenters, but that A. shall receive all profits, and shall pay wages to B. A. and B. are not partners.

(*e.*) A. and B. are joint owners of a ship. This circumstance does not make them partners.

242. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

243. In the absence of any agreement to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan.

244. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein nor give him the rights of a partner.

245. No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

246. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the goodwill of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

247. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm is responsible to him as a partner.

248. Any one permitting himself to be represented as a partner is liable as such to third persons, who on the faith thereof, give credit to the partnership.

249. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot

be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

250. A person who has been admitted to the benefits of partnership under the age of majority, becomes on attaining that age liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

251. Every partner is liable for all debts and obligations incurred by or on behalf of the partnership.

252. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

253. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his copartners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a.*) A. and B. trade in partnership, A. residing in England and B. in India. A. draws a bill of exchange in the name of the firm. B. has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(*b.*) A., being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bills.

(*c.*) A. and B. carry on business in partnership as bankers; a sum of money is received by A. on behalf of the firm. A. does not inform B. of such payment, and afterwards A. appropriates the money to his own use. The partnership is liable to make good the money.

(*d.*) A., a partner, takes upon him to agree that his firm shall submit to an arbitration. His undertaking is void.

(*e.*) A. and B. are partners. A., with the intention of cheating B., goes to a shop and purchases articles such as might be used in the partnership business, which he converts to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

254. Where partners have by agreement regulated and defined as between themselves their rights and obligations, such agreement can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration.

A., B., and C., intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A. receiving one-half of the net profits, and the other half being divided equally between B. and C. without any remonstrance on their part. This course of dealing supersedes the provision in the articles as to the division of profits.

255. In the absence of any agreement to the contrary, the relations of the partners to each other are determined by the following rules:

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for the purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.

(3.) Each

(3.) Each partner has a right to take part in the management of the partnership business.

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.

(5.) All ordinary matters of partnership business may be done with the consent of the majority of the partners; but no change in the nature of the business of the partnership can be made except with the consent of all the partners.

(6.) No person can introduce a new partner into a firm without the consent of all the partners.

(7.) If from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members.

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.

(9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever.

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

256. At the suit of a partner the court may dissolve the partnership in the following cases:—

(1.) When a partner becomes of unsound mind.

(2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.

(3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.

(4.) When any partner becomes incapable of performing his part of the partnership contract.

(5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.

(6.) When the business can only be carried on at a loss.

257. A partnership is in all cases dissolved by its business being prohibited by law.

258. If a partnership entered into for a fixed term be continued after such term has expired, the right and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

259. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

260. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a.*) A. and B. are partners for the sale of a mineral of a certain description. A. keeps a shop near a mine where this mineral is found, and buys it from the miners, giving them goods in which he deals in exchange. A. must account to B. for the profit which he obtains by selling his own goods as well as for that which he derives from the sale of the mineral.

(*b.*) A. B. and C. are partners in trade. C., without the knowledge of A. and B., obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A. and B. are entitled to participate, if they please, in the benefit of the lease.

(*c.*) A. B. and C. carry on business together in partnership as merchants, trading between Bombay and London. D., a merchant in London, to whom they make their consignments, secretly allows C. a share of the commission which he receives upon such consignments, in consideration of C.'s using his influence to obtain the consignments for him. C. is liable to account to the firm for the money so received by him.

261. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.

262. Every person introduced as a partner into a pre-existing firm is subject to all the obligations incurred by the firm before he was introduced.

263. A continuing guarantee, given either to a firm or to a third person in respect of the transactions of a firm, is not revoked as to future transactions by any change in the firm to which, or in respect of the transactions of which, such guarantee was given.

264. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death.

265. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him, or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

266. After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership.

267. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution.

268. In the absence of any agreement to the contrary, after the termination of a partnership, each partner, or his representative, may apply to the court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.

269. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint stock companies, shall be regulated by the law now in force in India relating thereto, until further provision shall be made in that behalf.

We humbly submit this our Second Report to your Majesty's Royal consideration.

Romilly. (L.S.)
Edward Ryan. (L.S.)
Robert Lowe. (L.S.)
John M. Macleod. (L.S.)
W. M. James. (L.S.)
J. Henderson. (L.S.)

Dated this 28th day of July 1866.

— No. 2. —

(Judicial, No. 42.)

To His Excellency the Right Honourable the Governor General of India in Council.

Sir, India Office, London, 14 September 1866.

I HEREWITH transmit 12 copies of the Second Report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, which I desire may be taken into early consideration by your Excellency in Council, in order that a measure founded on its provisions may be introduced into the Council for making Laws and Regulations.

2. Copies of the Report will be forwarded to the Governments of Madras and Bombay, with directions to forward any observations which a consideration of the Report may suggest to your Excellency in Council.

3. I regard the accomplishment by the Commission of a second and most important portion of the great duty entrusted to it as a subject of congratulation to all India.

4. A supply of copies of the Report will be sent by an early opportunity.

(signed) *Cranborne.*

— No. 3. —

Assistant Under Secretary of State for India to the Indian Law Commissioners.

Sir, India Office, 28 November 1867.

I AM directed by Sir Stafford Northcote to transmit to you, for the purpose of being placed before Her Majesty's Commissioners appointed to prepare a body of Substantive Law for India, the accompanying copy of a Despatch from the Government of India, dated 16th August (4) 1867, with a copy of a Draft Bill on the subject of contracts.

2. The draft Bill, it will be observed, is identical with the measure prepared by Her Majesty's Commissioners, with the exception that the claims relating to the specific performance contained in Sections 51 to 59 are omitted.

3. The grounds on which this omission is founded are set forth in the statement of objects and reasons, and in the notes recorded by the Governor General and the Members of his Council on the subject. I am directed by Sir Stafford Northcote to state that he would be glad to receive any observations which Her Majesty's Commissioners may desire to make on the subject, but he requests that the papers may be regarded as strictly confidential.

(signed) *J. C. Melvill.*

Wm. Macpherson, Esq.,
&c. &c.

— No. 4. —

(Home Department.—Legislative.—No. 4 of 1867.)

To the Right Honourable Sir Stafford Northcote, Bart., Secretary of State for India.

Sir, Simla, 16 August 1867.

Lord Cranborne's Despatch in the Judicial Department, No. 42, dated 14th September 1866, transmitted to us the Second Report of Her Majesty's Commissioners appointed to prepare a body of Substantive Law for India, which his Lordship desired us to take into early consideration, in order that a measure founded upon its provisions might be introduced into the Council for making Laws and Regulations.

2. The Second Report of Her Majesty's Commissioners is devoted entirely to the question of contracts, and contains a draft legislative measure on the subject, which our honourable colleague, Mr. Maine, has proposed to adopt, with the omission of the clauses relating to specific performance contained in Sections 51 to 59. A copy of the Draft Bill which our honourable colleague has prepared with this view is herewith forwarded.

1. Note by Mr. Maine, dated 15 July 1867.
2. „ the Governor-General, dated 19 July 1867.
3. „ Sir Henry Durand, „ 22 „ „
4. „ Sir G. Yule, „ 23 „ „
5. „ Mr. Maine, „ 23 „ „
6. „ Mr. Massey, „ 23 „ „
7. „ Mr. Maine, „ 25 „ „
8. „ the Governor-General „ 25 „ „
(With remarks by Mr. Maine) „ 26 „ „
9. Note by Mr. Maine, „ 27 „ „
10. „ Commander-in-Chief, „ 27 „ „
(With remarks by Sir H. Durand) „ 29 „ „
11. Note by Sir Henry Durand, „ 29 „ „
12. „ Mr. Maine, „ 14 Aug. „
13. „ the Governor-General „ 16 „ „

3. You will perceive from the statement of objects and reasons appended to the Bill, and from the notes which we have recorded on the subject, that Mr. Maine's proposal has been carefully discussed by us; and after a further consideration of the matter in Council, we have resolved to omit the clauses relating to specific performance, as not properly belonging to a Bill which enacts a general law of contract. Moreover, we think that the difficult questions raised by a law of specific performance for India will be more conveniently discussed upon a Bill which deals exclusively with the law of procedure.

We have, &c.

(signed) *John Lawrence.*
W. Mansfield.
H. S. Maine.
G. W. Taylor.
W. N. Massey.
H. M. Durand.
G. N. Yule.

(Home Department.—Legislative).

Simla, 2 August 1867.

THE following Bill and statement of objects and reasons accompanying it, are published for general information by order of his Excellency the Governor General, under the 19th of the rules for the conduct of business at meetings of the Council of the Governor General of India for the purposes of making Laws and Regulations:—

THE INDIAN CONTRACT LAW, 1867.

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11. Mistake of law.
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15. Contract taking effect only when specified uncertain event does not happen.
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17. When an engagement intended to take effect in case a specified event shall not happen, becomes absolute.
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19. When one reciprocal engagement does not become absolute till performance of other.
20. Parties mutually bound to facilitate performance.
21. Liability of party preventing event on which contract is to take effect.
22. Liability of one party failing to do act which he is bound to do, and which is necessary to enable the other to perform.
23. When time is essential.
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25. Failure to fulfil condition.
26. Contract conditioned to be terminated or varied on the happening, or not happening, of a specified uncertain event.
27. When such conditions are invalid.
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29. Termination or variation of contract made with condition subsequent that it shall be terminated or varied unless a certain person perform a specified act.
30. Discharge of alternative obligation where one of the two things is unlawful or impossible.
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35. Dispensation with, or remittance of, or acceptance of satisfaction in lieu of, performance.
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37. Time for performance of engagement where no time is specified, and no application to be made.
38. Time for performance of engagement where time is specified, and no application to be made.

Sect.
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42. Where there are several distinct debts, and the debt to which payment is to be applied, is indicated.
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44. Where neither party makes any appropriation.

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47. Devolution of joint liabilities.
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49. Release of one joint contractor.
50. Devolution of joint rights.

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51. Power to terminate contract on refusal of party to perform it wholly.

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PART III.—OF CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

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Sect.
69. Ascertainment of goods by subsequent appropriation.
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78. Contract to sell and deliver at a future day goods not in seller's possession at date of contract.
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THE INDIAN CONTRACT LAW, 1867.

PART I.—PRELIMINARY.

Short Title.

1. THIS Act may be called the "Indian Contract Law, 1867."

Interpretation Clause.

2. In this Act—unless there be something repugnant in the subject or context:—

Number. Gender.
Words importing the singular number include the plural, words importing the plural include the singular, and words importing the male sex include females;

"Person."
"Person" includes any Company or Association, or body of persons, whether incorporated or not;

'Child."
"Child," in the case of anyone whose personal law permits adoption, includes an adopted child;

"Immoveable property."
"Immoveable property" includes land, any benefit to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth;

"Moveable property."
"Moveable property" means property of every description, except immoveable property;

"British India."
"British India" means the territories which are, or may become, vested in Her Majesty or her successors by the Statute 21 & 22 Vict. c. 106 *(an Act for the better government of India)*.

Repeal of Acts.

3. The enactments specified in the first Schedule hereto are repealed, but nothing herein contained shall be deemed to affect the enactments specified in the second Schedule hereto, nor any enactment of the Governor General of India in Council, the Lieutenant-Governor of Bengal in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council, relating to the emigration, or transport, or contracts of native labourers, or saving the members of municipal committees from personal liability.

PART II.—OF CONTRACT IN GENERAL.

Contract defined.

4. A contract is an agreement between parties whereby a party engages to do a thing or engages not to do a thing.

A contract may contain several engagements, and they may be either by the same party or by different parties.

A contract may be expressied or implied, or partly expressed and partly implied.

A contract, or part of a contract, may be expressed either orally or by writing.

A contract, or part of a contract, is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustrations.

(*a.*) A. orally agrees with B. to buy of him, at a certain price, 500 maunds of rice. This is a contract expressed orally.

(*b.*) A. orders of B., by writing, 500 maunds of rice at a certain price. B., by writing, accepts the order. This is a contract expressed by writing.

(*c.*) A. orally agrees with B. to buy of him 500 maunds of rice at a price to be fixed afterwards. The price is afterwards fixed by correspondence between A. and B. This is a contract expressed in part orally and in part by writing.

(*d.*) A. orally orders B., a tailor, to make him a coat. B. accepts the order. The contract thus made contains an implied engagement by B. that the coat to be made for A. shall be of suitable materials, and shall fit A.; and an implied engagement by A. that he will accept the coat, and will pay for it, if within a reasonable time it shall be so made.

(*e.*) A., by writing, orders of B. 500 maunds of the best rice lying in his godowns. B. accepts the order. There is an implied engagement on A.'s part to pay a reasonable price for the rice.

Who may contract.

5. Every person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may enter into a contract.

Explanation 1.—Persons who are deaf, or dumb, or blind, are not thereby incapacitated for entering into a contract if they are able to know what they do by it.

Explanation 2.—One who is ordinarily insane may make a contract during an interval in which he is of sound mind.

Explanation 3.—No person can enter into a contract while he is in such a state of mind, whether arising from drunkenness, or from illness, or from any other cause, that he does not know what he is doing.

Retraction or alteration of proposal.

6. A proposal to enter into a contract may be retracted, or the terms of it altered by the party making it, at any time before it is accepted.

Explanation.—A proposal is said to be accepted when an expressed acceptance of it has been communicated to the proposer; or when a letter of acceptance is posted, or a telegraphic message of acceptance is delivered at a proper office, and the acceptance by letter or telegram is not cancelled by some communication which reaches the proposer before or at the same time with the letter or telegram of acceptance, or when acceptance is to be inferred from the circumstances of the case.

Illustration.

Illustration.

A. sends goods to B. for sale or return. B. sells the goods to C. B. has accepted the goods.

Acceptance of proposal.

7. A proposal does not bind the party making it, unless it be accepted within the time prescribed for its acceptance, or, if no time is prescribed, within a reasonable time.

Effect of deceit, coercion, and undue influence.

8. Any engagement which a contracting party has been induced to form by deceit or coercion, or by such influence as impedes or interferes with the freedom of his agency, renders the contract voidable at the option of that party.

Explanation 1.—Deceit may be practised on a person, not only by intentionally inducing him to believe what is not true, but by intentionally concealing truth from him.

Explanation 2.—In order to enable a party to annul a contract by reason of deceit, it must appear, where a false representation has been made, that he relied on the representation; and where the truth has been concealed, that he had not the means with ordinary diligence of discovering the truth.

Illustrations.

(*a.*) A., intending to deceive B., falsely represents that 500 maunds of indigo are made annually at A.'s factory, and thereby induces B. to buy the factory. The contract is voidable.

(*b.*) A., in order to deceive B., falsely informs him that 500 maunds of indigo are made annually at A.'s factory. B., not relying on this statement, examines the accounts of the factory, which show that only 400 maunds of indigo have been made. After this B. buys the factory. The contract is not voidable on account of A.'s mis-statement.

(*c.*) B. having discovered a seam of coal on A.'s estate, does not communicate that circumstance to A., and buys the estate at a price fixed by A. in ignorance of the existence of the coal. The sale is not voidable on account of B.'s conduct.

(*d.*) B. having discovered a vein of ore on the estate of A., adopts means to conceal, and does conceal from A., the existence of the ore, so that A. cannot, with ordinary diligence, discern its existence. Through A.'s ignorance, B. is enabled to buy the estate at an undervalue. The sale is voidable.

(*e.*) A. is entitled to succeed to an estate at the death of B. B. dies. C., having received intelligence of B.'s death, conceals the fact from A., and induces A. to sell him his interest in the estate. The sale is voidable.

(*f.*) B., by deceit, induces A. to enter into an engagement with B. for the benefit of C., who is not privy to the deceit. The engagement is voidable.

(*g.*) A., a young female who has resided during her minority in the family of B., her guardian, continues to reside with him after attaining majority, and is induced, by means of his influence, to enter into a contract with him which is disadvantageous to herself. The contract is voidable.

Effect of false representation inducing a contract.

9. A person who, either knowingly or ignorantly, makes a false representation whereby he induces another to enter into a contract with him, is bound to place the other in the same position, as if the representation had been true, and in default of his doing so, the contract is voidable at the option of the person who has been misled.

Explanation.—Where a party's consent to an engagement by contract has been given through a mistake as to the substance of the thing which is the subject of the engagement, and the mistake was occasioned, however innocently, by the other party, this has the same effect as a false representation.

Illustrations.

(*a.*) A. informs B. that A.'s estate is exempt from the payment of revenue to the Government; B., thereupon buys the estate. It turns out that the estate is not exempt from the payment of revenue, and that such exemption cannot be obtained. The sale is voidable.

(*b.*) A. informs B. that A.'s estate is within a mile of the town of Rámnagar; B. thereupon buys the estate. The estate is found to be two miles from the town. The sale is voidable.

(*c.*) A. informs B. that A.'s estate is free from encumbrance. B. thereupon buys the estate. It turns out that the estate is subject to a mortgage. A. must redeem the mortgage; or, if he cannot do so, the contract is voidable.

(*d.*) A and B. are partners in a mercantile business. A. is the managing partner, B is ignorant of the state of the business. A. and B., in order to induce C to become a partner with him, show him a statement of the affairs of the partnership, which is wrong by a large amount. C., relying upon the statement, joins the firm, and for several years does not discover the falsity of the statement. The contract of partnership is voidable at the option of C.

Mistake of fact.

10. Where both the parties to an engagement by contract are under a mistake as to a matter of fact essential to the engagement, the engagement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the contract, is not to be considered a mistake as to a matter of fact.

Illustrations.

(*a.*) A. agrees to sell to B. a cargo of goods, supposed to be on its way from England to Bombay. It turns out that before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The contract is void.

(*b.*) A. buys of B. a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The sale is void.

(*c.*) A., being entitled to an estate for the life of B., agrees to sell it to C. B. was dead at the time of the contract, but both parties were ignorant of the fact. The contract is void.

Mistake of law.

11. The validity of a contract is not affected by the circumstance that a party was at the time of making it under a mistake of law.

Explanation.—A mistake in respect of a law not in force in British India, has the legal consequences of mistake not of law but of fact.

Illustrations.

A. owes to B. a debt, the payment of which at a fixed time is guaranteed by C. B. contracts with A. to give time to A., C. not assenting to the arrangement. B. is not aware, at the time of entering into this contract, that its legal effect will be to discharge C. from liability under his guarantee. B. is nevertheless bound by his contract to give time to A.

Certainty of subject.

12. The subject of every contract must be certain, or capable of being made certain.

Illustrations.

(*a.*) A. agrees to sell to B. "100 tons of oil," the kind of oil not being specified or in any way indicated. The contract is void for uncertainty.

(*b.*) A. agrees to sell to B. 100 tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to prevent the contract from being valid.

(*c.*) A., who is a dealer in cocoanut oil only, agrees to sell to B. "100 tons of oil." The nature of A.'s trade affords an indication of the meaning of the words, and A. has entered into a contract for the sale of 100 tons of cocoanut oil.

(*d.*) A. agrees to sell to B. "all the grain in his granary at Rámnagar." There is no uncertainty here to prevent the contract from being valid.

(*e.*) A. agrees to sell to B. 1,000 maunds of rice, at a price to be fixed by C. The subject of the contract is capable of being made certain, and there is no uncertainty here to prevent the contract from being valid.

Object and consideration.
Promise when binding.

13. In order to the validity of an engagement by contract there must be a lawful object and a good consideration.

First Exception.—A person who makes a promise, whether upon good consideration or not, is bound to perform it if the promise be expressed in writing, and duly registered, according to the provisions of the law, for the time being in force, for the registration of assurances, unless the promise is unlawful, or is based on an unlawful consideration.

Second Exception.—A person who makes an express promise, without good consideration, is bound to perform it, if it be a promise to compensate wholly or in part, a person who has already voluntarily done something which the person who makes the promise was legally compellable to do; or if it be a promise to pay wholly or in part a debt which the creditor is legally entitled to receive from the person who makes the promise, but of which, by reason of the law for the limitation of suits, he cannot enforce payment.

Explanation 1.—A good consideration must be something which, at the desire of the person entering into the engagement, another person has done or abstained from doing, or does or abstains from doing, or promises to do, or to abstain from doing.

Explanation 2.—A good consideration must be lawful.

Explanation 3.—An object, a consideration, or a promise, is said to be lawful when it is not contrary to law or to morality.

Illustrations.

(*a.*) A. engages by contract with B. to sell his house to B. for 10,000 rupees. Here there is an engagement by A. to B., and an engagement by B. to A., and these engagements are valid, there being in each case a lawful object and a good consideration.

(*b.*) A agrees to sell his house at Rámnagar to B. for 10,000 rupees. Here the promise to pay the sum of 10,000 rupees is the consideration for A.'s entering into the contract; and the promise to convey the house is the consideration for B.'s entering into the contract. These are good considerations.

(*c.*) A. engages to pay B. 1,000 rupees at the end of six months, if C., who owes that sum to B., fails to pay it. B. engages to grant time to C. accordingly. Here the engagement of each party is the consideration for the engagement of the other party; and they are good considerations.

(*d.*) A. engages, for a certain sum paid to him by B., to make good to B. the value of his ship if it shall perish by shipwreck on a certain voyage. Here A.'s promise is the consideration for B.'s payment, and B.'s payment is the consideration for A.'s promise; and these are good considerations.

(*e.*) A. engages to maintain B.'s child, and B. engages to pay A. 1,000 rupees yearly for the purpose. Here the engagement of each party is the consideration for the engagement of the other party. They are good considerations.

(*f.*) A., B., and C. enter into a contract for the division among them of gains acquired, or to be acquired, by them by fraud. The contract is void.

(*g.*) A. undertakes to obtain for B. an employment in the public service, and B. agrees to pay 1,000 rupees to A. The contract is void, as the consideration for it is illegal.

(*h.*) A., being agent for a landed proprietor, agrees, for money, without the knowledge of his principal, to obtain for B. a lease of land belonging to his principal. The contract between A. and B. is void, being contrary to A.'s duty as agent.

(*i.*) A. engages with B. to drop a prosecution which he has instituted against B. for robbery, and B. engages to restore the value of the things taken. The contract is void.

(*j.*) A.'s estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B. upon an understanding with A., becomes the purchaser, and agrees to convey the estate to A., upon receiving from him the price which B. has paid. B.'s engagement is void, as it renders the transaction in effect a purchase by the defaulter.

(*k.*) A. engages to superintend on behalf of B. a legal manufacture of indigo and an illegal traffic in other articles. B. enters into an engagement to pay to A. a salary of 10,000 rupees a year. B.'s engagement is void—the consideration being in part unlawful.

(*l.*) A. voluntarily pays B. a sum of money which is due to B. from C. Afterwards C. promises to reimburse A. C. is bound to perform the promise.

Contract taking effect on happening of specified uncertain event.

14. An engagement by contract may be made to take effect only in case a specified uncertain event shall happen. The event may be the performance of something that constitutes the consideration, or part of the consideration for the engagement, or it may be an event distinct from such performance.

Illustrations.

Illustrations.

(*a.*) A. sells goods to B. for a fixed price, and engages to deliver them to him on receiving payment in full. A.'s engagement to deliver the goods does not become absolute until B. pays, or tenders to him the price.

(*b.*) A. sells goods to B. for a fixed price, to be paid by instalments, and engages to deliver them to him on receiving payment of the first instalment. A.'s engagement to deliver the goods does not become absolute until B. pays or tenders to him the first instalment.

(*c.*) A. enters into an engagement by contract with B. to buy B.'s house for 10,000 rupees, if A. shall survive C. A.'s engagement does not become absolute until C. dies, leaving A. surviving him.

(*d.*) A. enters into an engagement by contract with B. to sell a horse to B. at a specified price, in case C., to whom the horse has been offered, shall refuse to buy it. A.'s engagement does not become absolute until C. refuses to buy the horse.

Contract taking effect only when specified uncertain event does not happen.

15. An engagement by contract, which is intended to take effect only in case a specified uncertain event shall not happen, does not become absolute until the happening of that event becomes impossible.

Avoidance of engagement intended to take effect only in case specified uncertain event shall happen.

16. Where an engagement by contract is intended to take effect only in case a specified uncertain event shall happen within a fixed time, and the time expires without the event having occurred, the engagement becomes void. Where no time has been fixed for the happening of the event, the engagement becomes void as soon as it is ascertained that the event will not happen.

Illustrations.

(*a.*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall return within a year from the time of the contract. The year elapses without the ship having returned. The engagement becomes void.

(*b.*) A. enters into an engagement by contract to pay B. a certain sum of money, if C. shall leave a son surviving him. C. dies, not leaving a son surviving him. The engagement becomes void.

When an engagement intended to take effect in case a specified event shall not happen, becomes absolute.

17. Where an engagement by contract is intended to take effect in case a specified event shall not happen within a fixed time, the engagement does not become absolute until the time has expired without the event having occurred, or until, before the time fixed, it is ascertained that the event will not occur. Where no time has been fixed the engagement becomes absolute as soon as it is ascertained that the event will not happen.

Illustrations.

(*a*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return within a year. At the end of six months it is ascertained that the ship has been lost. The engagement has become absolute.

(*b.*) A. enters into an engagement by contract to pay B. a sum of money if a certain ship shall not return. It is ascertained that the ship has been lost. The engagement has become absolute.

Order of performance of different engagements.

18. Where the order in which different engagements are to be performed is not expressly fixed by the contract, it shall be that order which the nature of the transaction requires.

Illustrations.

(*a.*) A. enters into an engagement by contract to build a house for B. at a fixed price. B. engages to pay the price. B.'s engagement does not become absolute until A. finishes the house.

(*b.*) A., a tradesman, enters into an engagement by contract to make over his stock in trade to B. at a fixed price, and B. engages to give security for the payment of the money. A.'s engagement does not become absolute until the security is given; for the essence of the engagement is, that A. should have security before he delivers up his stock.

When one reciprocal engagement does not become absolute till performance of other.

19. Where one of two engagements by contract has been entered into in consideration of the other, and a time is appointed for the performance of one of them, which time is to arrive before the reciprocal engagement can be performed, the latter does not become absolute until the former has been performed.

Illustrations.

(*a.*) A. contracts with B. to sell to him at a specified price certain merchandise on board a ship which cannot arrive for a month, and B. engages to pay for the merchandise within a week from the date of the contract. A.'s engagement does not become absolute until B.'s engagement has been fulfilled.

(*b.*) A. contracts with B. to sell him 100 bales of merchandise to be delivered next day, and B. engages to pay for them within a month. B.'s engagement does not become absolute until the merchandise has been delivered to him.

Parties mutually bound to facilitate performance.

20. The parties to a contract are bound to afford to each other all reasonable facilities for performing their engagements.

Liability of party preventing event on which contract is to take effect.

21. Where an engagement by contract is intended to take effect on the happening of an event, and the party who has entered into the engagement prevents the happening of the event, he becomes liable to perform the engagement, or to make compensation to the other party for any loss which he may have sustained in consequence of its non-performance.

Illustration.

A. engages to pay 1,000 rupees to B, provided that B. shall execute certain work for him; and B. engages to execute the work. B. is ready and willing to execute the work accordingly, but A. prevents him from doing so. A.'s engagement has become absolute.

Liability of one party failing to do act which he is bound to do, and which is necessary to enable the other to perform.

22. When a person having entered into an engagement by contract with another fails to do an act which he is bound by law to do, and which is necessary to enable the other to perform his part of the contract, the party who has failed to do such act is liable to make compensation to the other party for any loss or damage which he may have sustained in consequence of the non-performance of it.

Illustrations.

Illustrations.

(*a.*) A. hires B.'s ship to take in and convey from Calcutta to the Mauritius a cargo to be provided by A., B. receiving a certain freight for its conveyance. A. does not provide any cargo for the ship. A. must make compensation to B. for his failure.

(*b.*) A. enters into an engagement by contract with B. to execute certain builders' work, for a fixed price, B. supplying the scaffolding and timber necessary for the work. B. refuses to furnish any scaffolding or timber, and the work cannot be executed. B. is bound to make compensation to A. for any loss caused to him by the non-execution.

When time is essential.

23. When there are mutual engagements by contract, and one of them is an entire and indivisible engagement by contract for the doing of a particular thing by a fixed time, time is of the essence of the contract, and unless the thing be done at the stipulated time the reciprocal engagement, if any, does not become absolute.

Effect of doing several things, but not at the times specified.

24. Where there are mutual engagements by contract, and one of them is an engagement for the doing of several things at different times, and the things stipulated are done, but not at the times specified, this irregularity does not prevent the reciprocal engagement from becoming absolute, but the person who entered into the latter engagement is entitled to compensation for any loss which he may have sustained in consequence of the irregularity.

Conditional Contract.

Failure to fulfil conditions.

25. When an engagement by contract is conditional, and the condition fails to be fulfilled, the engagement becomes void.

Illustration

A. engages to pay 10,000 rupees to B. if he will marry A.'s daughter. A's daughter was dead at the date of the engagement. The condition cannot be fulfilled, and the engagement is void.

Contract conditioned to be terminated or varied on the happening, or not happening, of a specified uncertain event.

26. An engagement by contract may be made with the condition superadded, that it shall be terminated or varied in case a specified uncertain event shall happen, or that it shall be terminated or varied in case a specified uncertain event shall not happen.

When such conditions are invalid.

27. A condition of the kind described in the last preceding section is invalid and does not affect the engagement to which it is superadded, if at the time of the contract the event is impossible, or if it is repugnant to law or morality, or inconsistent with the main purpose of the contract.

Result of such conditions subsequently becoming unlawful or impossible.

28. An engagement to which is superadded a condition of the kind described in Section 26 becomes void if the fulfilment of the condition is, subsequently to the contract, rendered unlawful, or is made impossible by some unforeseen event which the person who entered into the engagement could not prevent.

Illustrations.

(*a.*) A. engages to pay B. 5,000 rupees, provided that the engagement shall be void if A. takes in cargo for B. at a certain port. The Government afterwards declares war against the country in which the port is situated, so that A. cannot trade there. The engagement becomes void.

(*b.*) A., a singer, who has undertaken to sing at B.'s theatre, engages to pay B. 20,000 rupees, provided that his engagement shall be void if A. sings at B.'s theatre on a certain number of nights in the month of June. A. before June loses his voice through illness. The engagement to pay 20,000 rupees becomes void.

Termination or variation of contract made with condition subsequent that it shall be terminated or varied unless a certain person perform a specified act.

29. Where an engagement by contract is made with a condition superadded, that it shall be terminated or varied unless a certain person shall perform a specified act, but no time is specified for the performance of the act; if such person takes any step which renders impossible or indefinitely postpones the performance of the act required, the engagement shall be terminated or varied as if such person had died without performing the act.

Discharge of alternative obligation where one of the two things is unlawful or impossible.

30. If a condition of the kind described in Section 26 consists in doing one or the other of two things, and one of them is unlawful or impossible, the condition can only be fulfilled by doing the other.

Illustration.

A. engages by contract to pay B. a fixed sum, provided that if A. delivers to B. on a certain future day either 20 maunds of the finest rice, or a certain quantity of opium to be obtained contrary to law, the engagement shall be void. The condition cannot be fulfilled otherwise than by the delivery of 20 maunds of the finest rice.

Liability of person failing to do an act which he has engaged to do.

31. A person who fails to do an act which he has engaged by contract to do, shall make compensation to the person in whose favour the act was to be done.

Exception.—A man incurs no liability through the non-performance of an act which he has engaged by contract to do, where, since the date of the contract, the performance of the act has been rendered unlawful, or has been made impossible by some event, of which he did not, expressly, or by implication, take upon himself the risk.

Illustrations.

(*a.*) A. engages so deliver to B. at a certain price, at a specified time and place, a cargo of merchandise then at sea in his ship. The ship is afterwards lost at sea, with all its cargo. A. is liable to make compensation to B. for the non-performance of his engagement.

(*b*) A. freighted B.'s ship to proceed to the Island of Ichaboe, and there to take in a cargo of guano, to be supplied by A., and to convey it to a certain port. The guano at Ichaboe was entirely exhausted before the ship arrived, and it was impossible for A. to supply a cargo. A. must make compensation to B. for the non-performance of his engagement.

(*c*) A.,

(*c.*) A., the owner of a music hall, agrees to let B. have the use of it for four days in June for the purpose of giving concerts in it; B. to pay 1,000 rupees a day. On the 30th of May the hall is accidentally destroyed by fire without the fault of either party. Neither party is bound to make compensation for the non-performance of the act which he engaged by the contract to do.

(*d.*) A., a painter, enters into an engagement to paint a picture for B. A. becomes blind. A. is not liable to make compensation to B. for not painting the picture.

(*e.*) A. engages to take in cargo at a certain port. The Government afterwards declares war against the country in which the port is situated, so that A. cannot trade there. He is not bound to make compensation for failure to take in cargo at the specified port.

Rule of Construction.

Interpretation of contracts.

32. For the purpose of determining questions as to the meaning of a contract, a Court must inquire into every material fact relating to the situation of the parties to, or the subject-matter of such contract, and into every fact a knowledge of which may conduce to the right application of the words which the contracting parties have used.

Performance of Contract.

Person by whom contract is to be performed.

33. An engagement by contract must be performed by the person who has entered into it, unless its nature be such that it can be properly performed by another, in which case he may employ a competent person to perform it; or if he dies before performance, his representatives may perform it, or employ a competent person to do so.

Illustrations.

(*a.*) A. engages to pay B. a sum of money. He may perform this engagement, either by personally paying the money to B., or by causing it to be paid to B. by another; and if A. dies the time appointed for payment, his representatives may perform the engagement.

(*b.*) A. engages to paint a picture for B. This engagement cannot be performed except by A.'s painting the picture himself.

Effect of accepting performance from a third person.

34. Where a person who is entitled to claim from another the performance of an engagement accepts such performance from a third person, he cannot afterwards enforce it against the person who entered into the engagement.

Dispensation with, or remittance of, or acceptance of satisfaction in lieu of, performance.

35. A person who is entitled to claim performance of an engagement may dispense with or remit such performance wholly or in part, or may extend the time for it, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a.*) A. engages to paint a picture for B. B. afterwards expressly forbids him to do so. A. is no longer bound to perform the engagement.

(*b.*) A. owes B. 5,000 rupees. By agreement A. pays to B. and B. accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c.*) A. owes B. 5,000 rupees. C. pays to B. 1,000 rupees, and B. accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d.*) A. owes B., under a contract, a sum of money, the amount of which has not been ascertained. A. without ascertaining the amount, gives to B., and B., in satisfaction thereof, accepts the sum of 2,000 rupees This is a discharge of the whole debt, whatever may be its amount.

(*e.*) A. owes B. 2,000 rupees, and is also indebted to other creditors. A. makes an arrangement with his creditors, including B., to pay them a composition of 8 annas in the rupee upon their respective demands. Payment to B. of 1,000 rupees is a discharge of B's demand.

Acceptance of new contract in substitution.

36. If a person who is entitled to claim the performance of an engagement by contract accepts a new and distinct contract by way of substitution for the existing one, the original engagement is no longer in force.

Illustrations.

(*a.*) A. owes money to B. under a contract. It is agreed between A., B., and C. that B. shall thenceforth accept C. as his debtor instead of A. The old debt of A. to B. is at an end, and a new debt from C. to B. has been contracted.

(*b.*) A. owes B 10,000 rupees. A. enters into an arrangement with B. and gives him a mortgage of A.'s estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract.

(*c.*) A. and B. have mercantile transactions with each other, and A. thereby becomes indebted to B. in the sum of 10,000 rupees, for which B. holds no security. Afterwards A. executes a bond in favour of B. to secure the payment of the sum due to him. The execution of this bond does not constitute a new and distinct contract.

(*d.*) A. owes B. 1,000 rupees under a contract; B, owes C. 1,000 rupees. B. orders A. to pay 1,000 rupees to C. C. does not assent to the arrangement. B. still owes C. 1,000 rupees, and no new contract has been entered into.

Time and Place for Performance.

Time for performance of engagement where no time is specified, and no application to be made.

37. Where by the contract a person is to perform his engagement without application by the person with whom he made the engagement, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question what is a reasonable time is in each particular case a question of fact.

Time for performance of engagement where no time is specified, and no application to be made.

38. When an engagement is to be performed on a certain day, and the person entering into the engagement has undertaken to perform it without application, he has the whole of that day to perform the engagement in; subject to this qualification, that the person who is to receive performance is not bound to receive it before or after the usual hours of business, or at any other place than that at which the engagement ought to be performed.

Illustration.

Illustration.

A. engages to deliver goods at B.'s warehouse on the 1st January. On that day A. brings the goods to B.'s warehouse, but after the usual hour for closing it, and they are not received. A. has not performed his engagement.

Application for performance at a proper time and place.

39 When the engagement is to be performed on a certain day, and the person entering into the engagement has not undertaken to perform it without application, it is the duty of the person in whose favour the engagement is made to apply for performance at a proper time and place.

Explanation.—The question what is a proper time and place is in each particular case a question of fact.

Place for performance of engagement, where no application to be made and no place fixed.

40. Where an engagement is to be performed without application, and no place is fixed for the performance of it, the person bound by the engagement must perform it at any reasonable place which the person with whom the engagement was made may appoint.

Illustration.

A. undertakes to pay B. 1,000 rupees on a fixed day. A. must apply to B. to appoint a reasonable place for the purpose of receiving it, and must pay it to him at such place.

Performance in manner or at time prescribed or sanctioned by person entitled to claim it.

41. The performance is valid if made in any manner or at any time which the person entitled to claim performance may have prescribed, or may have subsequently sanctioned.

Illustrations.

(*a.*) B. owes A. 2,000 rupees. A. desires B. to pay the amount to B.'s account with C., a banker. B., who also banks with C., orders the amount to be transferred from his account to A.'s credit, and this is done by C. Afterwards, and before A. knows of this, C. fails. This is a good payment by B.

(*b.*) A. and B. are mutually indebted. A. and B. settle an account by setting off one item against another, and B. pays A. the balance found to be due from him upon such settlement. This amounts to a payment by A. and B. respectively of the sums which they owed to each other.

(*c.*) A. owes B. 2,000 rupees. A. and B. agree that B. shall receive some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d.*) A. owes B. 2,000 rupees. A. gives to B., and B. accepts a cheque for that amount drawn by A. This operates as payment, provided the cheque be duly paid.

(*e.*) A. desires B., who owes him a sum of money, to remit the amount of his debt by post. The debt is discharged as soon as B. puts into the post a letter containing the money, duly addressed to A.

Appropriation of Payments.

Where there are several distinct debts, and the debt to which payment is to be applied, is indicated.

42. Where a man owing several distinct debts to one person, makes a payment to him either with express intimation, or under circumstances implying that the payment is to be applied to some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations.

(*a.*) A. owes B. (among other debts) 1,000 rupees upon a promissory note, which falls due on the 1st June. He owes B. no other debt of that amount. On the 1st June A. pays to B. 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(*b.*) A. owes to B. (among other debts) the sum of 567 rupees. B. writes to A. and demands payment of this sum. A. sends to B. 567 rupees. This payment is to be applied to the discharge of the debt of which B. had demanded payment.

Where there are several distinct debts, and the debt to which payment is to be applied is not indicated.

43. Where the debtor has omitted to intimate, and there are no other circumstances indicating, to which debt the payment is to be applied, the creditor is at liberty to apply it at his discretion to any lawful debt actually due and payable to him from the payer, on giving notice thereof to the payer within a reasonable time.

Where neither party makes any appropriation.

44. Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time. If they are of equal standing, the payment shall be applied in discharge of each proportionately.

Offer of Performance.

Effect of refusal to accept offer of performance.

45. Where a person who has come under an engagement to another has made him an offer of performance, and the offer has not been accepted, the person who has made such offer is not responsible for non-performance so caused, nor does he thereby lose his title to claim performance of any reciprocal engagement.

Requisites to valid offer of performance.

46. In order to constitute a valid offer of performance, the following rules must be observed:—

1.—The offer must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining whether the thing tendered really is what it purports to be.

2.—The offer must be a tender of the whole thing which the other party to the engagement is entitled to demand.

3.—It must be unconditional.

4.—An offer to one of several joint creditors has the same legal consequences as an offer to all of them.

Explanation.

Explanation.—Where the performance of an engagement would involve the production of a certain thing, it is not necessary to the validity of a tender that the thing should actually be produced, if the person entitled to claim performance does not require that it should be produced.

Joint Liabilities and Rights.

Devolution of joint liabilities.

47. When two persons have jointly come under an engagement by contract to a third person, then, unless a contrary intention appears by the contract, the liability to perform the engagement rests, as between them and him, on those two persons during their joint lives, and after the death of either, on his representative jointly with the survivor, and after the death of the survivor, on the representatives of both jointly.

Liability of persons jointly bound.

48. As between themselves, persons who have jointly come under an engagement are bound, unless a contrary intention appears by the contract, to bear the burden of its performance equally; and if one of them is unable to bear his share of the burden, the others must make up the deficiency by equal contributions.

Explanation.—This rule is not to prevent a surety from recovering his disbursements from the principal, or to entitle the principal to recover anything from the surety.

Illustrations.

(*a.*) A., B., and C. are under a joint engagement to pay D. the sum of 3,000 rupees. A. is insolvent, but his assets are sufficient to pay one-half of his debts. A.'s estate pays 500 rupees. B. and C. must pay 1,250 rupees each.

(*b.*) A., B., and C. are under a joint engagement to pay D. 3,000 rupees, A. and B. being in fact only sureties for C. C. is unable to pay anything, and A. pays the whole. A. is entitled to receive 1,500 rupees from B.

(*c.*) A., B., and C. are under a joint engagement to pay D. 3,000 rupees, A. and B. being in fact only sureties for C. C. is unable to pay; A. and B. are compelled to pay the whole sum. They are entitled to recover it from C.

Release of one joint contractor.

49. Where two persons have jointly come under an engagement by contract to a third person, a release of one of them by such third person does not discharge the other; neither does it free that one from responsibility to the other.

Devolution of joint rights.

50. When a person has come under an engagement by contract to two other persons jointly, then, unless a contrary intention appears by the contract, the right to claim performance rests (as between him and them) with them during their joint lives, and after the death of either, with his representative jointly with the survivor, and after the death of the survivor, with the representatives of both jointly.

Illustrations.

A., in consideration of 5,000 rupees lent to him by B. and C., enters into an engagement by contract with B. and C. to repay them that sum with interest on a day specified. B. dies. The right to claim performance rests with B.'s representative jointly with C. during C.'s life, and after the death of C. with the representatives of B. and C. jointly.

Power to terminate Contract.

Power to terminate contract on refusal of party to perform it wholly.

51. When a party to a contract has refused to perform, or disabled himself from performing, his engagement in its entirety, the party who has entered into the reciprocal engagement may put an end to the contract, provided he has not signified, expressly or impliedly, that he acquiesced in its continuance.

Illustrations.

(*a.*) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B. engages to pay her 100 rupees for each night's performance. On the sixth night the singer wilfully absents herself from the theatre. B. is at liberty to put an end to the contract.

(*b.*) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre two nights in every week during the next two months.; and B. engages to pay her at the rate of 100 rupees for each night. On the sixth night the singer wilfully absents herself. With the assent of B. she sings on the seventh night. B. has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through her failure.

Compensation.

Party rightfully terminating contract, entitled to compensation.

52. A person who rightfully puts an end to an engagement is entitled to compensation for any damage he has sustained.

Payment of sum specified to be paid in case of breach.

Payment of compensation.

53. When a contract has been broken, if a sum is named in the contract itself as the amount to be paid in case of such breach, the amount so named shall be paid accordingly; but if no sum has been named in the contract itself, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for loss or damage caused to him thereby. Provided that it has naturally arisen in the usual course of things from such breach, or that it was in the knowledge of the parties at the time they made the contract, that such loss or damage would probably result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Explanation.—In estimating the loss, the means which existed of remedying the inconvenience caused by the non-performance of the engagement, must be taken into account.

Illustrations.

(*a.*) A. enters into an engagement by contract, that in case he fails to pay B. 500 rupees on a certain day, he shall immediately become liable to pay him 1,000 rupees. A. fails to pay B. 500 rupees on the day named. A. has become liable to pay B. 1,000 rupees.

(*b.*) A. enters into an engagement by contract, that if he practises as a surgeon in the town of Z., he shall pay B. 5,000 rupees. A. commits a breach of the engagement. The sum of 5,000 rupees is actually payable by A. to B.

(*c.*) A. agrees to sell and deliver 50 maunds of saltpetre to B. at a certain price; to be paid on delivery. A. breaks his engagement. B. is entitled to receive from A., by way of compensation, the sum, if any, by which the contract price falls short of the price for which B. might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*d.*) A. hires B.'s ship to go to Bombay, and there take on board on the 1st of January a cargo (which A. is to provide) and to bring it to Calcutta; the freight to be paid when earned. B.'s ship does not go to Bombay, but A. has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A. avails himself of those opportunities, but is put to trouble and expense in doing so. A. is entitled to receive compensation from B. in respect of such trouble and expense.

(*e.*) A. agrees to sell and deliver to B. on the 1st of January, at a stated price, a certain quantity of cotton, to be paid for on delivery. Afterwards, on the 1st December, A. announces to B. that he does not intend to perform his engagement, and on the 1st of January he delivers no cotton to B. B. is entitled to receive from A., by way of compensation, the excess, if any, of price of the like quantity of cotton on the 1st of January over the contract price.

(*f.*) A. agrees to sell and deliver to B. on the 1st of January a certain quantity of sugar, for which B. pays him in advance. Afterwards, on the 1st of December, A. informs B. that he does not intend to deliver the sugar, and on the 1st of January he does not deliver it. B. is entitled to receive from A. the money paid, together with current mercantile interest, and also, by way of compensation, the excess, if any, of the sum for which the sugar could have been procured by him on the 1st of January, over the sum paid in advance.

(*g.*) A. agrees to buy of B., at a stated price, 50 maunds of rice, no time being fixed for delivery. A. afterwards intimates to B. that he will not accept the rice if tendered to him. B. is entitled to receive from A., by way of compensation, the amount, if any, by which the contract price exceeds that which B. could have obtained for the rice at the time of the refusal.

(*h.*) A. agrees to buy B.'s ship for 60,000 rupees, but breaks his engagement. A. must pay to B., by way of compensation, the excess, if any, of the contract price over the price which B. can obtain for the ship at the time of the breach of engagement.

(*i.*) A. agrees to buy of B., at a stated price, 100 bales of jute, to be delivered on the 1st of January. Afterwards, on the 15th of December, A. gives notice to B. that he will not accept the jute; on the 1st January the jute is tendered to A., who refuses to accept it. A. must pay to B., by way of compensation, the excess, if any, of the contract price over the sum which B. could obtain for the jute on the 1st of January.

(*j.*) A., the owner of a boat, enters into an engagement by contract with B. to take a cargo of jute to Mirzapore, for sale at that place, starting on a specified day. The boat does not start at the time appointed, whereby the arrival of the cargo at Mirzapore is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B. by A., is the difference between the price which B. could have obtained for the cargo at Mirzapore at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*k.*) A. engages to repair B.'s house in a certain manner, and receives payment in advance. A. repairs the house, but not according to contract. B. is entitled to recover from A. the cost of making the repairs conform to the engagement.

(*l.*) A. agrees to let his ship to B. for a year from the 1st of January next for a certain price. Freights rise, and on the 1st of January the hire obtainable for the ship is higher than the contract price. A. breaks his engagement. He must pay to B., by way of compensation, a sum equal to the difference between the contract price and the hire which could be obtained for the use of the ship on the 1st of January.

(*m.*) A. engaged to supply B. with a certain quantity of iron at a fixed price, being a higher price than that for which A. could procure and deliver the iron. B. wrongfully refused to receive the iron. B. must pay to A., by way of compensation, the difference between the contract price of the iron and the sum for which A. could have obtained and delivered it.

(*n.*) A. delivers to B., a common carrier, a machine, to be conveyed, without delay, to A.'s mill, informing B. that his mill is stopped for want of the machine. B. unreasonably delays the delivery of the machine, and A. in consequence loses a profitable contract with the Government. A. is entitled to receive from B., by way of compensation, the average amount of profit which would have been made by the use of such machine during the time that delivery of it was delayed, but not to the loss sustained by not obtaining the Government contract.

(*o.*) A. having entered into an engagement with B. to supply B. with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, enters into an agreement with C. for the purchase of a certain quantity of iron at 80 rupees a ton, telling C. that he does so for the purpose of performing his engagement with B. C. fails to fulfil his engagement with A., who cannot procure other iron, and, in consequence, fails to fulfil his engagement with B. C. must pay to A. 20,000 rupees, being the profit which A. would have made by the performance of his engagement.

(*p.*) A. entered into an engagement with B. to make and deliver to B. by a fixed day, for a specified price, a certain piece of machinery. A. did not deliver the piece of machinery at the time specified, and in consequence of this B. was obliged to procure another, at a higher price than that which he was to have paid to A., and was prevented from fulfilling an engagement under which he lay to a third person at the time of his contract with A. (but which had not been then communicated to A.), and was compelled to make compensation for breach of his engagement. A. must pay to B., by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B. for another, but not the sum paid by A. to the third person by way of compensation.

(*q.*) A., a builder, undertakes to erect and finish a house by the 1st of January, in order that B. may give possession of it at that time to C., to whom B. has agreed to let it. A. is informed of the agreement between B. and C. A. builds the house so badly that before the 1st of January it falls down, and has to be rebuilt by B., who in consequence loses the rent which he was to have received from C., and is obliged to make compensation to C. for the breach of his engagement. A. must make compensation to B. for the cost of re-building the house, for the rent lost, and for the compensation made.

(*r.*) A. sells certain merchandise to B., warranting it to be of a particular quality, and B., in reliance upon this warranty, sells it to C. with a similar warranty. The warranties are broken, and B. becomes liable

liable to pay C. a sum of money by way of compensation. B. is entitled to be reimbursed this sum by A.

(*s.*) A. engages to supply B. with a threshing machine on the 15th of August; he is aware at the time of entering into the engagement that B is in the habit of threshing out his wheat in the field, and sending it off at once to market. A. did not supply the machine on the 15th of August, but assured B. from day to day that it would be delivered shortly. He delivered the machine on the 11th of September. In consequence of the non-delivery of the machine, it became necessary for A. to carry the wheat home and stack it; it was injured by exposure to the weather, and had to be dried at a great expense; its quality was much deteriorated, and before it could be sold the market price of wheat had fallen. B., in consequence of these events, is unable to pay a judgment debt to C., who seizes and sells his property in execution. A. must make compensation to B. in respect of the expenses of carrying, stacking, and drying the wheat, and in respect of its deterioration in quality; but not in respect of the loss sustained by B. through the fall in the market price of wheat, nor in respect of the seizure of his property.

(*t.*) A. has entered into an engagement by contract to pay a sum of money to B. on a day specified. A. does not pay the money on the day appointed. B., in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A. is not liable to make good to B. anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(*u.*) A. engaged to deliver 50 maunds of saltpetre to B. on the 1st of January at a certain price. B. afterwards, before the 1st of January, agreed to sell the saltpetre to C. at a price higher than the market price of the 1st of January. A. broke his engagement. In estimating the compensation payable by A. to B. the market price of the 1st of January, and not the profit which would have arisen to B. from the sale to C., is to be taken into account.

(*v.*) A. engaged to sell and deliver 500 bales of cotton to B. on a fixed day. A. broke his engagement, and B. having no cotton, was obliged to close his mill. A. is not responsible to B. for the loss caused to B. by the closing of his mill.

(*w.*) A. agreed to sell and deliver to B. on the 1st of January certain cloth which B. intended to manufacture into caps of a particular kind, for which there was no demand except at that season. The cloth was not delivered till long after the appointed time, and too late to be used that year in making caps. A. is entitled to receive from B., by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*x.*) A., a ship-owner, agreed with B. to convey him from Calcutta to Sydney in A.'s ship, sailing on the 1st of January; and B. paid to A. by way of deposit one-half of his passage money. The ship did not sail on the 1st of January, and B., after being in consequence detained in Calcutta for some time, and thereby put to some expense, proceeded to Sydney in another vessel, and in consequence, arriving too late in Sydney, lost a sum of money. A. is liable to repay to B. his deposit with interest, and the expense to which he was put by his detention in Calcutta, but not the sum of money which he lost by arriving in Sydney too late.

PART III.—ON CERTAIN OBLIGATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Effect of one person intentionally leading another to believe in a non-existent state of things, when the other acts on such belief.

54. Where a person has, either by words spoken or written, or by his conduct, led another to believe that a certain state of things exists which does not really exist, with the intention that the other shall act upon such belief in a transaction between them, and the other accordingly acts upon such belief; the person who has caused such belief is bound to place the other in the same position as if such a state of things had existed, or, in default, to make compensation to the other in respect of any loss or damage which he has incurred by acting upon such belief.

Effect of one person, by a false representation, inducing another to contract with a third party.

55. A person who, by a false representation, induces another to enter into a contract with a third party, is bound to make good the representation if he knew it to be false, or if, in the due discharge of his duty, he ought to have known it to be so.

Illustrations.

(*a.*) A. is trustee for B. of certain property. B. creates a charge upon the trust property, of which notice is given to A. B. afterwards enters into treaty with C. for the sale of the property. C. asks A. whether the property is incumbered or not. A. not remembering the notice, replies in the negative, and C. thereupon buys the property. A. as well as B. is responsible for the discharge of the incumbrance.

(*b.*) A. conveys his property to B., upon a secret trust for A.'s benefit and permits B. to appear as the owner of it. B. alienates the property to a person who is not aware of the trust. A. cannot dispute the alienation.

(*c.*) A. being applied to by B. for merchandise upon credit, asks C. whether B. is in good circumstances. C., knowing B. to be deeply in debt, with the intention of inducing A. to comply with B.'s wishes, replies that B. is in good circumstances. In consequence of this reply, A. lets B. have the merchandise on credit. B. becomes insolvent before the time for payment arrives. C. is liable to make good to A. the value of the merchandise.

(*d.*) C., without any particular knowledge of B.'s means, speaks of him in the presence of A. as a person in good circumstances. A. in consequence lets B. have merchandise on credit. B. becomes insolvent. C. is not liable to make good to A. the value of the merchandise.

Representation as to future conduct.

56. If one person makes a deliberate statement as to his own future conduct to another, with the intent that it should be acted upon, and the other acts upon the faith of such assurance, the person who made the statement must make it good.

Illustration.

A. holding a decree against B., and knowing that B. is desirous to be married to C., assures the father of C. that he will never enforce the execution of the decree against B. C.'s father, relying on this assurance, permits the marriage to take place. A. is not entitled to enforce the execution of the decree.

Supply of necessaries to persons incapable of contracting.

57. If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a.*) A. supplies B., a minor, with necessaries suitable to his condition in life. A. is entitled to be reimbursed from B.'s property.

(*b.*) A. supplies the wife and children of B., a lunatic, with necessaries suitable to their condition in life. A. is entitled to be reimbursed from B.'s property.

Reimbursement of person paying what another is bound to pay.

58. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Illustration.

A. holds some land in Bengal as zamíndár. B. holds the land on a lease granted by A. The revenue payable by A. to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B.'s lease. B., to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A. is bound to make good to B. the amount so paid.

Effect of non-gratuitous act of which a person enjoys the benefit.

59. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other enjoys the benefit thereof, the latter is bound to restore or to make compensation to the former in respect of the thing so done or delivered.

This rule shall apply, notwithstanding that there shall have been a larger contract between the parties, which has been put an end to by reason of a breach thereof.

Illustrations.

(*a.*) A., a tradesman, leaves goods at B.'s house by mistake. B. treats the goods as his own. He is bound to pay A. for them.

(*b.*) A. contracts with B. to deliver to him 250 maunds of rice before the 1st of May. A. delivers 130 maunds only before that day and none after. B. retains the 130 maunds after the 1st of May. He is bound to pay A. for them.

(*c.*) A., a singer, enters into an engagement with B., the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B. engages to pay her 100 rupees for each night's performance; on the sixth night the singer wilfully absents herself from the theatre, and B. in consequence puts an end to the engagement. B. must pay A. for the five nights on which she had sung.

Responsibility of finder of goods.

60. A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid by mistake or coercion.

61. A person to whom money has been paid by mistake or under coercion is liable to repay it.

Illustration.

A. and B. jointly owe 100 rupees to C. A. alone pays the amount to C., and B., not knowing this fact, pays 100 rupees over again to C. C. is bound to repay the amount to B.

PART IV.—SALE OF GOODS.

"Goods" defined.

62. In the following chapter the word "goods" is used to denote every kind of moveable property.

"Sale" defined.

63. Sale is the exchange of anything which is property for a price. It involves the transference of the ownership of the thing sold from the seller to the buyer.

Sale how effected.

64. Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods, together with payment of the price or delivery of the goods, or with tender, part payment, earnest, or part delivery, or with an agreement, express or implied, that the payment, or delivery, or both, shall be postponed.

Illustrations.

(*a.*) B. offers to buy A.'s horse for 500 rupees. A. accepts the offer, and tells B. to take away the horse. The horse has been sold to B.

(*b.*) A. sends goods to B., with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B. retains the goods, and informs A. that he approves of them. The goods have been sold to B.

(*c*) B. offers A. for his horse 1,000 rupees, the horse to be delivered to B. on a stated day, and the price to be paid on another stated day. A. accepts the offer. The horse has been sold to B. by offer and acceptance with an agreement to postpone delivery and payment.

(*d.*) B. offers A. for his horse 1,000 rupees, on a month's credit. A. accepts the offer. The horse has been sold to B. by offer and acceptance with an agreement to postpone the payment.

(*e.*) B., on the 1st January 1863, offers to A. for a quantity of rice 2,000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A. accepts the offer. The rice has been sold to B.

Effect of agreement for sale of thing to be ascertained, made, or finished.

65. By an agreement for the sale of a thing which has yet to be ascertained, made, or finished, no ownership of any portion of that thing passes to the buyer until it is ascertained, made, or finished.

Illustration.

B. orders A., a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B. pays to A. money from time to time on account of the price. The ownership of the barge does not pass to B. until it is finished.

Sale of goods which the seller is to put into state in which buyer is to take them.

66. Where by an agreement for the sale of goods the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.

Illustrations.

Illustrations.

(*a.*) A., a ship-builder, agrees to sell to B. for a stated price, a vessel which is lying in A.'s yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the agreement a sale is not effected until the vessel has been rigged, fitted up, and delivered.

(*b.*) A. contracts to build a ship for B. for a price, payable by instalments dependent on the progress of the building of the ship, and the ship is to be built under B.'s superintendence. The ownership of the materials incorporated with the ship passes to B. at the time of incorporation, as this was intended by the parties, but the materials lying in A.'s yard, though suited and intended for the ship, do not pass to B. until they are actually incorporated with the ship.

Sale of goods when seller has to do anything thereto in order to ascertain price.

67. Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustrations.

(*a.*) A., owner of a stack of bark, agrees to sell it to B. at 100 rupees per ton; B. agrees to take and pay for it on a certain day. Part is weighed and delivered to B.; the ownership of the residue is not transferred to B. until it has been weighed pursuant to the contract.

(*b.*) A. agrees to sell a heap of clay to B. at a certain price per ton; B. is by the agreement to load the clay in his own carts, and to weigh each load at a certain weighing machine which his carts must pass over on their way from A.'s ground to B.'s place of deposit. Here nothing more remains to be done by the seller, the sale is complete, and the ownership of the heap of clay is transferred at once.

Sale when goods are unascertained at date of agreement.

68. Where the goods are not ascertained at the time of making the agreement for sale it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration.

A. agrees to sell to B. 20 tons of oil in A.'s cisterns. A.'s cisterns contain more than 20 tons of oil. B. has not acquired the ownership of any portion of the oil.

Ascertainment of goods by subsequent appropriation.

69. Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration.

A. having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, agrees to sell B. 20 hogsheads of it. After the agreement, A. fills 20 hogsheads with the sugar, and gives notice to B. that the hogsheads are ready, and requires him to take them away. B. says he will take them as soon as he can. By this appropriation by A. and assent by B., the ownership passes to B.

Ascertainment of goods by seller's selection.

70. Where the goods are not ascertained at the time of making the agreement for sale, and by the terms of the agreement the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the agreement, and by his doing so the goods are ascertained.

Illustration.

B. agrees with A. to purchase of him at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A.'s granary. It is agreed that B. shall send sacks for the rice, and that A. shall put the rice into them. B. does so, and A. puts 50 maunds of rice into the sacks. The goods have been ascertained.

Agreement for sale of immoveable and moveable property combined.

71. Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transference of the immoveable property.

Illustration.

A. agrees with B. for the sale of a house and furniture. The ownership of the furniture does not pass to B. until the house is conveyed to B.

Sale of several lots by auction.

72. Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down.

Buyer's risk.

73. A buyer to whom the ownership of the goods sold has passed, is liable to bear any loss arising from the destruction or injury of the goods.

Illustration.

B. offers and A. accepts 100 rupees for a stack of fire-wood standing on A.'s premises, the fire-wood to be allowed to remain on A.'s premises till a certain day, and not to be taken away till paid for. Before payment, and while the fire-wood is on A.'s premises, it is accidentally destroyed by fire. B. must bear the loss.

Agreement for sale may be oral or written.

74. A valid agreement for the sale of goods may be made either by word or mouth or by writing.

Acquisition of ownership of goods by purchase from their possessor.

75. The ownership of goods may be acquired by buying them from any person who is in possession of them: provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

Illustrations.

(*a.*) A. steals a cow from B. and sells it at a cattle-market to C., a purchaser, in good faith. A. is afterwards convicted of the theft. B. cannot recover the cow from C.

(*b.*) A., a person whose rank and occupation are not such as to account for his having plate in his possession, sells a piece of plate to B. without giving a satisfactory explanation of the manner in which he had become possessed of it. The plate had, in fact, been stolen from C.; C., on proof of the theft, can recover the plate from B.

(*c.*) A., a commercial agent, to whom goods have been consigned, with instructions not to sell them without reference

reference to the consignor, sells them to B., who has no ground for a reasonable presumption that A. has no right to sell them. The consignor cannot disturb the sale.

(*d.*) A., a commercial agent, to whom goods have been consigned with instructions not to sell them without reference to the consignor, sells them, without such reference, to B. who is acquainted with the instructions given to A. The sale is void as against the consignor.

A quisition by purchase from possessor of documentary title.

76. The ownership of goods may be acquired by buying them from any person who is in possession of a bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other documentary title to the goods: provided that the buyer acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell the goods.

Illustration.

A. sells to B. goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C., and it has not been indorsed by C. The sale is not valid.

Transfer of ownership of goods agreed to be sold while non-existent.

77. Under an agreement for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts which, after the goods are produced, are done in pursuance of the agreement by the seller, or by the buyer with the seller's assent.

Illustrations.

(*a.*) A. agrees to sell to B. for a stated price all the indigo which shall be produced at A.'s factory during the ensuing year. A., when the indigo has been manufactured, gives to B. an acknowledgment that he holds the indigo at his disposal. The ownership of the indigo vests in B. from the date of the acknowledgment.

(*b.*) A. for a stated price agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement B., with the assent of A., takes possession of some crops grown in succession to the crops standing at the time of the agreement. The ownership of the crops when taken vests in B.

(*c.*) A. for a stated price agrees that B. may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this agreement B. applies to A. for possession of some crops grown in succession to the crops which were standing at the time of the agreement. A. refuses to give possession. The ownership of the crops does not pass to B.

Contract to sell and deliver at a future day goods not in seller's possession at date of contract.

78. An agreement for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the agreement, and though at that time he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration.

A. agrees on the 1st January to sell B. 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A., at the time of making the agreement, is not in possession of any shares. The agreement is valid.

Determination of unfixed price.

79. Where there has been a sale, or an agreement to sell, and the amount of the price has not been fixed, it shall be determined by the consideration of what is just and reasonable.

Illustration.

B., living at Patna, orders of A., a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the amount of it must be determined by the consideration of what is just and reasonable.

Delivery.

Delivery how made.

80. Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorised to hold them on his behalf.

Illustrations.

(*a.*) A. sells to B. a horse, and causes or permits it to be removed from A.'s stables to B.'s. This is a delivery.

(*b.*) B. in England orders 100 bales of cotton from A., a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(*c.*) A. sells to B. certain specific goods which are locked up in a godown. A. gives B. the key of the godown, in order that he may get the goods. This is a delivery.

(*d.*) A. sells to B. five specific casks of oil. The oil is in the warehouse of A. B. sells the five casks to C. A. receives warehouse rent for them from C. This amounts to a delivery of the oil to C., as it shows an assent on the part of A. to hold the goods as warehouseman of C.

(*e.*) A. sells to B. 50 maunds of rice in the possession of C., a warehouseman. A. gives B. an order to C. to transfer the rice to B., and C. assents to such order, and transfers the rice in his books to B. This is a delivery.

(*f.*) A. agrees to sell B. five tons of oil at 1,000 rupees per ton, to be paid for at the time of delivery. A. gives to C., a wharfinger, at whose wharf he had 20 tons of the oil, an order to transfer five of them into the name of B. C. makes the transfer in his books, and gives A.'s clerk a notice of the transfer for B. A.'s clerk takes the transfer notice to B., and offers to give it him on payment of the bill. B. refuses to pay. There has been no delivery to B., as B. never assented to make C. his agent to hold for him the five tons selected by A.

Effect of delivery to wharfinger or carrier.

81. A delivery to a wharfinger or carrier of the goods sold, which do not reach the buyer, does not render the buyer liable for the price, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe delivery of the goods.

Illustration.

B., at Agra, orders of A., who lives at Calcutta, three casks of oil to be sent to him by railway. A. takes three casks of oil directed to B. to the railway station, and leaves them there without conforming to the rules which

which must be complied with in order to render the railway company responsible for their safety. This is not a sufficient delivery to charge B. in a suit for the price, if the goods are not delivered to the buyer.

82. A delivery of part of the goods in progress of the delivery of the whole has the same legal effect as a delivery of the whole; but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder. Effect of part-delivery.

Illustrations.

(*a.*) A ship arrives in a harbour laden with a cargo consigned to A., the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A. in progress of the delivery of the whole. This is a delivery of the cargo to A.

(*b.*) A. sells to B. a stack of fire-wood, be paid for by bill on delivery. After the sale, B. applies for and obtins from A. leave to take away some of the fire-wood. This has not the legal effect of delivery of the whole.

(*c.*) A. sells 50 maunds of rice to B. The rice remains in A.'s warehouse. After the sale, B. sells to C. 10 maunds of the rice, and A., at B.'s desire, sends the 10 maunds to C. This has not the legal effect of a delivery of the whole.

83. In the absence of any special agreement, the seller of goods is not bound to deliver them until the buyer applies for possession. Seller not bound to deliver until buyer applies for possession.

84. In the absence of any agreement as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement for sale, or, if not then in existence, at the place at which they are produced. Place of delivery.

Seller's Lien.

85. Unless a contrary intention appears by the agreement, a seller has a lien on sold goods as long as they remain in his possession, and the price or any part of it remains unpaid. Seller's lien.

86. Where by the agreement the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, the seller may retain the goods for the price. Lien where payment to be made at a future day, but no time fixed for delivery. Insolvency defined.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration.

A. sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives A. the bill of exchange, but allows the sugar to remain in A.'s warehouse. Before the bill falls due B. stops payment. A. may retain the goods for the price.

87. Where by the agreement the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price. Where payment to be made at future day, and buyer allows goods to remain in seller's possession.

Illustration.

A. sells to B. a quantity of sugar in A.'s warehouse. Payment is agreed to be made by a bill of exchange at three months. B. gives the bill of exchange, but allows the sugar to remain in the warehouse. The bill is dishonoured. A. may retain the goods for the price.

88. A seller in possession of goods sold may retain them for the price against any subsequent buyer, unless the seller has recognised the title of the subsequent buyer. Seller's lien against subsequent buyer.

Illustrations.

(*a.*) A. sells to B. at three months' credit a chest of tea then in the custody of X., a wharfinger. A. gives B. a delivery order for the tea, and before the expiration for the credit, B. re-sells the tea to C. for cash, and transfers to him the delivery order. B. stops payment before C. obtains possession under the order. A. may countermand the order to X., and retain the goods against C.

(*b.*) A. sells to B. a cargo of sugar then in the warehouse of A.; B., according to the terms of the sale, gives A. his acceptance at three months for the price of the sugar. B. sells the sugar to C. for cash, and gives C. an order addressed to A., requesting him to deliver the sugar to C. A. assents to the delivery order, and agrees to hold for C. Afterwards B. becomes insolvent, and his acceptance is dishonoured. A. cannot retain the goods against C.

Stoppage in Transit.

89. A seller who has parted with the possession of the goods, and has not received the whole price, may, in the event of the buyer becoming insolvent, stop the goods while they are in transit to the buyer. Power to stop in transit.

90. Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer, or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged. When goods are to be deemed in transit.

Illustrations.

(*a.*) B., living at Madras, orders goods of A. at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C., a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C., are in transit.

(*b.*) B. at Delhi orders goods of A. at Calcutta. A. consigns and forwards the goods to B. at Delhi. On arrival there, they are taken to the warehouse of B. and left there. B. refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(*c.*) B., who lives at Puna, orders goods of A. at Bombay. A. sends them to Puna by C., a carrier appointed by B. The goods arrive at Puna, and are placed by C., at B.'s request, in C.'s warehouse for B. The goods are no longer in transit.

(*d.*) B., a merchant of London, orders 100 bales of cotton of A., a merchant at Bombay. B. sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

Continuance of right of stoppage.

91. The right of stoppage does not cease on the buyer's re-selling the goods while in transit, and receiving the price; but continues until the goods have been delivered to the second buyer, or to some person on his behalf.

Cessation of right on assignment of bill of lading.

92. The right of stoppage ceases if the buyer, while the goods are in transit, assigns a bill of lading in respect of them to a second buyer in good faith for valuable consideration.

Illustrations.

(*a.*) A. sells and consigns certain goods to B. A. being still unpaid, B. becomes insolvent, and while the goods are in transit assigns the bill of lading for cash to C., who is not aware of his insolvency. A. cannot stop the goods in transit.

(*b.*) A. sells and consigns certain goods to B. A. being still unpaid, B. becomes insolvent, and while the goods are still in transit assigns the bill of lading for cash to C., who knows that B. is insolvent. The assignment not being in good faith, A. may still stop the goods in transit.

Cessation of right on fulfilment of condition.

93. Where a bill of lading is not negotiable until a certain condition has been fulfilled, the right of stoppage does not cease until such condition has been fulfilled.

Illustration.

A. sells and despatches goods to B. and sends him a letter enclosing the bill of lading, and directing him not to part with it until he has accepted certain bills of exchange which A. has drawn against the consignment. B., without accepting the bills of exchange, assigns the bill of lading to a buyer in good faith for a valuable consideration. A.'s right of stoppage does not cease upon such assignment.

Stoppage on payment to pledgee of amount of claim.

94. Where a bill of lading is assigned by the buyer by way of pledge to secure an advance which has been made upon it in good faith, the seller may, on payment or tender to the pledgee of the amount of his claim, stop the goods in transit.

Illustrations.

(*a.*) A. sells and consigns goods to B. of the value of 12,000 rupees. B. assigns the bill of lading for those goods to C. to secure a specific advance of 5,000 rupees made to him upon the bill of lading by C. B. becomes insolvent, being indebted to C. to the amount of 9,000 rupees. A. is entitled to stop the goods on payment or tender to C. of 5,000 rupees.

(*b.*) A. sells and consigns goods to B. of the value of 12,000 rupees. B. assigns the bill of lading for those goods to C. to secure the sum of 5,000 rupees due from him to C. upon a general balance of account. B. becomes insolvent. A. is entitled to stop the goods in transit for the whole sum due to him.

Stoppage how effected.

95. Stoppage in transit may be effected by the seller, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depositary in whose possession they are.

Notice of seller's claim.

96. The notice may be given either to the person who has the immediate possession of the goods, or to the principal whose servant has the possession. In the latter case, it must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer.

Right of seller on stoppage.

97. Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration.

A. sells to B. 100 bales of cotton; 60 bales having come into B.'s possession, and 40 being still in transit, B. becomes insolvent, and A., being still unpaid, stops the 40 bales in transit. A. is entitled to hold the 40 bales until the price of the 100 bales is paid.

Re-sale.

Re-sale on buyer's failure to perform.

98. Where the buyer fails to perform his part of the agreement, either by not taking the goods sold to him or by not paying for them, the seller may re-sell them within a reasonable time after giving notice to the buyer of his intention to do so; and the buyer must bear any loss, but is not entitled to any profit which may occur on the re-sale.

Warranty of Title.

Seller's responsibility for badness of title.

99. If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer for the loss thereby caused, unless a contrary intention appears by the agreement.

Implied warranty of goodness or quality.

100. An implied warranty of goodness or quality may be established by the custom of any particular trade.

Warranty of soundness on sale of provisions.

101. On the sale of provisions there is an implied warranty that they are sound.

102. On

102. On the sale of goods by sample there is an implied warranty that the bulk is equal in quality to the sample. Warranty on sale of goods by sample.

103. Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have bought them by sample or after inspection of the bulk. Warranty on sale of goods sold as being of a certain denomination.

Illustrations.

(*a.*) A., at Calcutta, sells to B. 12 bags of "waste silk," then on its way from Moorshedabad to Calcutta. There is an implied warranty by A. that the silk shall be such as is known in the market under the denomination of "waste silk."

(*b.*) A. sells parcels of "linseed oil" by sample to B. There is an implied warranty by A. that the article sold is such as is known in the market as "linseed oil"; and if he delivers an article which, though equal to sample, is not such as is known in the market as linseed oil, there is a breach of the implied warranty.

(*c.*) A. sells to B. 40 casks of "oxalic acid," B. having before the sale seen the bulk of the acid, and inspected samples of it. The acid proves to be so adulterated as not to be the article known in commerce as "oxalic acid." There is here a breach of an implied warranty.

(*d.*) A. in London, where inland bills of exchange do, and foreign bills of exchange do not, by law require a stamp, sells to B. a bill of exchange unstamped and purporting to be a foreign bill. There is an implied warranty by A. that the bill is a foreign bill; and if it turns out that the bill is not a foreign but an inland bill, there is a breach of that implied warranty.

104. Where goods have been ordered for a specified purpose, for which goods of the denomination employed in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose. Warranty where goods ordered for a specified purpose.

Illustration.

B. orders of A., a copper manufacturer, copper for sheathing a vessel. A. on this order supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel.

105. Upon the sale of an article of a well-known ascertained kind there is no implied warranty of its fitness for any particular purpose. Sale of article of a well-known ascertained kind.

Illustration.

B. writes to A., the owner of a patent invention for cleaning cotton, "Send me your patent cotton-cleaning machine to clean the cotton at my factory." A. sends the machine according to order. There is an implied warranty by A. that it is the article known as A.'s patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B.'s factory.

106. In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold, is not responsible for a latent defect in it. Non-responsibility for latent defects.

Illustration.

A., in good faith, sells and delivers to B. scrip certificates of shares in a certain railway company. Afterwards the scrip is repudiated on the ground that it had been issued without authority. A. is not responsible for loss sustained by B. in consequence.

107. Where a specific article has been sold with a warranty and the warranty is broken, the sale is not thereby rendered voidable, but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty. Buyer's right on breach of warranty.

Illustration.

A. sells to B. a horse, warranted sound. The horse proves to have been unsound at the time of sale. B. is entitled to compensation from A. for loss caused by the unsoundness.

108. Where there has been an agreement for the sale of goods with a warranty, and the warranty is broken, the buyer may reject the goods on their being tendered to him, or may return them after the lapse of not more than a reasonable time for ascertaining the breach of warranty: provided that beyond keeping them such time, and examining or trying them, he does not exercise any act of ownership over them; or he may retain them: and whichever course he follows, he is entitled to compensation from the seller for loss caused by the breach of warranty. Rejection or return of goods sold with warranty.

Illustrations.

(*a.*) A. agrees to sell to B. 200 bales of cotton by sample. Cotton not in accordance with sample is delivered to B. He may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(*b.*) B. agrees to buy of A. 25 sacks of flour by sample. The flour is delivered to B. who pays the price. B., upon examination, finds it not equal to sample, and complains of this to A. B. afterwards uses two sacks, and sells one. He cannot now repudiate the contract and recover the price, but he is entitled to compensation from A. for any loss caused by the breach of warranty.

Refusal to accept.

109. When the seller sends goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered. Refusal to accept when goods not ordered are sent.

Illustration.

A. orders of B. specific articles of china. B. sends these articles to A. in a hamper with other articles of china, which had not been ordered. A. may refuse to accept any of the goods sent.

110. If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale. Effect of wrongful refusal to accept.

Rescission in Default of Payment.

Rescission on failure to pay price at time fixed.

111. The seller of goods is not entitled to rescind the agreement on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the agreement that he should be so entitled.

Auction.

Puffers at auction.

112. If at a sale by auction the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer.

Part V.—Of Indemnity and Guarantee.

Indemnity defined.

113. A person can bind himself to save another person from eventual loss.

The security thus afforded is called indemnity when the loss guarded against is that which may be consequent upon the conduct of some person.

Illustrations.

(*a.*) A gives B. a letter of indemnity against the consequences of any proceedings which C. may take against B. in respect of a certain sum of 200 rupees. Here A. binds himself by an express engagement to save B. from consequent loss if C. shall act as contemplated.

(*b.*) B. accepts a bill of exchange, at A.'s request, for the accommodation of A. A. does not provide for the bill at maturity, and B. is compelled to pay it. A. is liable to B. for the amount of the bill. Here A. binds himself by an implied engagement to indemnify B. against loss consequent on a failure on A.'s part to provide for payment of the bill when due.

Agent's indemnity against consequences of lawful acts.

114. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by him in exercise of the authority conferred upon him.

Illustrations.

(*a.*) B., a stockbroker at London, and member of the Stock Exchange, at the request of A., buys for him 20 shares in a bank, "to be paid for on settlement day." Before the settlement day arrives, the bank stops payment, and A. repudiates the transaction, and tells B. not to pay the price. By the rules of the Stock Exchange, however, B. is compelled to pay the price on the settlement day. A. is liable to B. for the price on an implied agreement to indemnify.

(*b.*) B. at Singapore, under instructions from A. of Calcutta, contracts with C. to deliver certain goods to him B. does not send the goods to B., and C. sues B. for breach of contract. B. informs A. of the suit, and A. authorises him to defend the suit. C. defends the suit, and is compelled to pay damages and costs, and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

(*c.*) B. a broker at Calcutta, by the orders of A., a merchant there, contracts with C. for the purchase of 10 casks of oil for A. Afterwards A. refuses to receive the oil, and C. sues B. B. informs A., who repudiates the contract altogether. B. defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A. is liable to B. for such damages, costs, and expenses.

Agent's indemnity against consequences of acts done in good faith.

115. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cost an injury to the rights of third persons.

Illustrations.

(*a.*) A., a decree-holder and entitled to execution of B.'s goods, requires the názir to seize certain goods representing them to be the goods of B. The názir seizes the goods, and is sued by C., the true owner of the goods. A. is liable to indemnify the názir for the sum he is compelled to pay to C., in consequence of obeying A.'s directions.

(*b.*) B., an auctioneer, at request of A., sells goods in the possession of A., but which A. had no right to dispose of. B. does not know this, and hands over the proceeds of the sale to A. Afterwards C., the true owner of the goods, sues B. and recovers the value of the goods and costs. A. is liable to indemnify B. for what he has been compelled to pay to C., and for B.'s own expenses.

(*c.*) A. employs B. to make a quantity of fire-bricks with a trade-mark, which A. knows, but B. does not, to be the trade-mark of C. B. makes and marks the bricks as ordered. C. obtains an injunction against B. A. is liable to pay B. the amount of his expenses.

Non-liability of employer of agent to do a criminal act.

116. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Illustrations.

(*a.*) A. employs B. to beat C., and agrees to indemnify him against all consequences of the act. B. thereupon beats C, and has to pay damages to C. for so doing. A. is not liable to indemnify B. for those damages.

(*b.*) B., the proprietor of a newspaper, publishes, at A.'s request, a libel upon C. in the paper, and A. agrees to indemnify B. against the consequences of the publication, and all cost and damages of any action in respect thereof. B. is sued by C. and has to pay damages, and also incurs expenses. A. is not liable to B. upon the indemnity.

Rights and liabilities of indemnity-holder when sued.

117. Where a person holds an indemnity and a suit is brought against him in respect of matters comprised in the indemnity, it is his duty to give notice to the person who is bound to indemnify him; and if that person does not authorise him to defend the suit, he is at liberty to compromise it. Whether he defends the suit under such authority as aforesaid, or in the absence of such authority compromises it, he is entitled to receive from the person bound to indemnify him the damages and costs which he has been compelled to pay.

If he defends the suit without such authority, he is entitled to receive from the person bound to indemnify him the amount he has been compelled to pay, exclusive of any expenses caused by his having defended the suit; unless in defending it he has acted as a prudent man holding no indemnity would have acted in his own case.

(*a.*) B. at

Illustrations.

(*a.*) B. at the request of A., accepts a bill of exchange for the accommodation of A. C., the holder of the bill, sues B. upon it. B. has clearly no defence, but, without the authority of A., he defends the suit, and has to pay costs as well as the amount of the bill. B. can only recover from A. the amount of the bill, upon A.'s implied promise to indemnify.

(*b.*) C. who holds a lease from W. of certain houses, assigns the lease to B., who agrees to indemnify and save harmless C. from all damages and expenses in respect of the breach of any of the covenants therein. B. re-assigns the lease to A., who gives a like indemnity to B. A. commits a a breach of a covenant to repair. W. sues C. and recovers 2,000 rupees, and C. has to pay, in addition, 800 rupees as costs and expenses. C. sues B., who defends the suit unsuccessfully, and has to pay to C. the 2,800 rupees; and also incurs costs and expenses in the defence. A. is only liable to B for 2,800 rupees, and not for the costs and expenses, as the amount of liability was ascertained by the suit of W. against C., and B. ought to have paid that amount at once to C. on demand.

Definitions of "guarantee," "surety," "principal debtor," and "creditor."

118. An engagement to fulfil the liability of a third person in case of his default is called a guarantee when founded on sufficient consideration. The person who gives the guarantee is called the surety, the person primarily liable is called the principal debtor, and the person to whom the guarantee is given is called the creditor. A guarantee may be either oral or written.

Consideration for guarantee.

119. Anything which is done or agreed to be done for the benefit of the principal debtor, and which is an inducement to the surety to give the guarantee, may be a sufficient consideration.

Illustrations.

(*a.*) B. requests A. to sell and deliver to him goods on credit. A. agrees to do so, provided C. will guarantee the payment of the price of the goods. C. agrees to guarantee the payment of the goods to be supplied. This is a good guarantee.

(*b.*) A. sells and delivers goods to B. C. afterwards requests A. to forbear to sue B. for the debt for a year, and promises that if he does so, C. will pay for them in default of payment by B. A. agrees to forbear as requested. There is here a sufficient consideration to sustain C.'s guarantee.

(*c.*) A. sells and delivers goods to B. C. afterwards promises A. to pay for them in default of B. This is not a guarantee, as there is no consideration to support it.

When offer constitutes a guarantee.

120. An offer to guarantee does not constitute a guarantee until it is accepted by the person to whom it is made, and the acceptance is notified to the offerer.

Surety's liability.

121. The liability of the surety is co-extensive with that of the principal debtor.

Illustration.

A. guarantees to B. the payment of a bill of exchange by C., the acceptor. The bill is dishonoured by C. A. is liable, not only for the amount of the bill, but also for any interest which may have become due on it.

Continuing guarantee.

122. A guarantee may extend to a series of transactions, in which case it is called a continuing guarantee.

Illustrations.

(*a.*) A., in consideration that B. will employ C. in collecting the rents of B.'s zamíndárí promises B. to be responsible to the amount of 5,000 rupees, for the due collection and payment by C. of those rents. This is a continuing guarantee.

(*b.*) A. promises B., a tea-dealer, to be responsible to the amount of 100*l.* for any tea he may supply to C. B. supplies C. with tea to above the value of 100*l.*, and C. pays B. for the same. Afterwards B. supplies C. with tea to the value of 200*l.* C. fails to pay. The guarantee given by A. was a continuing guarantee, and he is accordingly liable to B. to the extent of 100*l.*

(*c.*) A. agrees with B. to be answerable to him for the price of five sacks of flour, to be delivered by B. to C., payable in one month. B. delivers five sacks to C. A. pays for them. Afterwards B. delivers four sacks to C., which C. does not pay for. The guarantee given by A. was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee.

123. A continuing guarantee may be at any time revoked by the surety as to future transactions, by notice to the creditor.

Illustrations.

(*a.*) A., in consideration of B.'s discounting, at A.'s request, bills of exchange for C., guarantees to B. for 12 months the due payment of all such bills to the extent of 5,000 rupees. B. discounts bills for C. to the extent of 2,000 rupees. Afterwards, at the end of three months, A. revokes the guarantee. This revocation discharges A. from all liability to B. for any subsequent discount; but A. is liable to B. for the 2,000 rupees, on default of C.

(*b.*) A. guarantees to B., to the extent of 10,000 rupees, that C. shall pay all the bills that B. shall draw upon him. B. draws upon C. C. accepts the bill. A. gives notice of revocation. C. dishonours the bill at maturity. A. is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

124. The death of the surety operates as a revocation of a continuing guarantee, so far as regards future transactions, in the absence of any agreement to the contrary.

Liability of two persons primarily liable, not affected by a private arrangement as to suretyship.

125. Where, upon the face of the agreement, two persons are primarily liable to a third person, that liability is not affected, so far as regards the third person, by an arrangement between the two, that one of them shall be liable only upon the default of the other, even although such arrangement may have been known to the third person, unless he was a party to the arrangement.

Illustration.

A. and B. make a joint and several promissory note to C. A. makes it, in fact, as surety for B., and C. knows this at the time when the note is made. In a suit by C. against A. upon the note, the fact that A. made it as surety for B. and that C. knew it, is no answer to the suit.

 126. Any

Discharge of surety by variance in terms of agreement.

126. Any variance made without the surety's consent, in the terms of the original agreement, discharges the surety as to future transactions.

Illustrations.

(*a.*) A. becomes surety to C. for B.'s conduct as a manager in C.'s bank. Afterwards, B. and C. agree, without A.'s consent, that B.'s salary shall be raised, and that he shall become liable to one-fourth of the losses on discounts. B. allows a customer to overdraw, and the bank loses a sum of money. A. is discharged from his suretyship by the variance made, without his consent, and is not liable to make good this loss.

(*b.*) A. guarantees C. against the misconduct of B. in an office to which he is appointed by C., and of which the duties are defined by an Act of the Legislature. By a subsequent Act the nature of the office is materially altered. Afterwards, B. misconducts himself. A. is discharged from future liability under his guarantee by the change, though the misconduct of B. is in respect of a duty not affected by the later Act.

(*c.*) C agrees to appoint B. as his clerk to sell coals at a yearly salary of 100 *l.*, upon A.'s becoming surety to C. for B.'s duly accounting for monies received by him as such clerk. Afterwards, without A.'s knowledge or consent, C. and B. agree that B. should be paid by a commission of 6 *d.* per ton on the coal sold by him instead of by the fixed salary. A. is not liable for subsequent misconduct of B.

(*d.*) A. gives to C. a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C. to B. on credit. Afterwards, B. becomes embarrassed, and, without the knowledge of A., B. and C. agree that C. should continue to supply B. with oil for ready money, and that the payments should be applied to the then existing debts between B. and C. A. is not liable on his guarantee for any goods supplied after this new arrangement.

(*e.*) A., as surety for B., gives to C. a promissory note for 5,000 rupees upon an agreement that the 5,000 rupees should be paid by C. to B. "by draft at three months' date." C., without A.'s knowledge, pays the 5,000 rupees to B. at once, instead of giving a draft. A. is discharged from liability, as the agreement has been varied, and C. might sue B. for the money before the expiration of three months.

Discharge of surety by release or discharge of principal debtor.

127. The surety is discharged by any agreement between the creditor and the principal debtor, by which the principal is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a.*) A. gives a guarantee to C. for goods to be supplied by C. to B. C. supplies goods to B., and afterwards B. becomes embarrassed, and agrees with his creditors (including C.) to assign to them his property, in consideration of their releasing him from their demands. Here B. is released from his debt by agreement with C., and A. is discharged from his suretyship.

(*b.*) A. agrees with B. to grow a crop of indigo on A.'s land, and to deliver it to B. at a fixed rate, and C. guarantees A.'s performance of this agreement. B. diverts a stream of water which is necessary for the irrigation of A.'s land, and thereby prevents him from raising the indigo. C. is no longer liable on his guarantee.

(*c.*) A. agrees with B., for a fixed price, to build a house for B. within a stipulated time, B. supplying the necessary timber. C. guarantees A.'s performance of the contract. B. omits to supply the timber. C. is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to, or agrees not to sue principal debtor.

128. An agreement between the creditor and the principal debtor, by which the creditor makes a composition with, or agrees to give time to, or not to sue, the principal debtor, discharges the surety.

Illustrations.

(*a.*) C., the holder of an overdue bill of exchange drawn by A. as surety for B., and accepted by B., binds himself by a valid agreement with B. to give time to B., A. not assenting to the agreement. A. is discharged from liability on the bill.

(*b.*) C., to whom B. owes a debt guaranteed by A., binds himself by agreement with B. not to sue B., and to accept four annas in the rupee in respect of B.'s debts. A. assents to the arrangement. A. is not discharged, and is liable to C. for the whole debt.

Agreement to give time to principal debtor made with a third person.

129. Where an agreement to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration.

C., the holder of an overdue bill of exchange, drawn by A., as surety for B., and accepted by B., binds himself by a valid agreement with M. to give time to B. A. has no knowledge of this agreement. A. is not discharged.

Creditor's forbearance to sue.

130. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration.

B. owes to C. a debt guaranteed by A. The debt becomes payable. C. does not sue B. for a year after the debt has become payable. A. is not discharged from his suretyship.

Release of one co-surety.

131. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free that one from any responsibility to the others.

Discharge of surety by creditor's act or omission imparing surety's eventual remedy.

132. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations.

(*a.*) B. agrees to build a ship for C. for a given sum, to be paid by instalments as the work reaches certain stages. A. becomes surety to C. for B.'s due performance of the agreement. C., without the knowledge of A., prepays to B. the last two instalments. A. is discharged by this payment.

(*b.*) B. agrees with C. to complete certain fittings in C.'s warehouse for 8,000 rupees, C. stipulating to insure, from time to time, the fittings from fire, and to deduct the costs of the insurance from the 8,000 rupees. A., knowing of this agreement, guarantees B.'s due performance of the work. C. never insures, and fittings to the value of 7,000 rupees are destroyed by the fire at B.'s shop. B. becomes insolvent, and it costs

costs C. 9,000 rupees to complete the work. A. is discharged by C.'s omission to insure, not merely to the extent of the benefit he would have derived from the insurance if it had been effected, but altogether.

(*c.*) C. lends money to B. on the security of a joint and several promissory note made in C.'s favour by B. and by A. as surety for B., together with a bill of sale of B.'s furniture, which gives power to C. to sell the furniture, and apply the proceeds in satisfaction of the monies due on the note. Subsequently C. sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A. is discharged from liability on the note.

(*d.*) A. puts M. as apprentice to B., and gives a guarantee to B. for M.'s fidelity. B. covenants on his part that he will, at least once a month, see M. make up the cash. B. omits to see this done as agreed, and M. embezzles. A. is not liable to B. on his guarantee.

Rights of surety on payment or performance.

133. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities.

134. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time the contract is entered into, whether the surety knows or does not know of the existence of such security; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Illustrations.

(*a.*) C. advances to B., his tenant, 2,000 rupees on the guarantee of A. C. has also further security for the 2,000 rupees by a mortgage of B.'s furniture. C. cancels the mortgage. B. becomes insolvent, and C. sues A. on his guarantee. A. is discharged from liability to the amount of the value of the furniture.

(*b.*) C., a creditor, whose advance to B. is secured by a decree, receives also a guarantee for that advance from A. C. afterwards takes B.'s goods in execution under the decree, and then, without the knowledge of A., withdraws the execution. A. is discharged.

(*c.*) A., as surety for B., makes a bond jointly with B. to C. to secure a loan from C. to B. After the date of this transaction, C. obtains from B. a further security for the same debt. Subsequently C. gives up the further security. A. is not discharged.

Guarantee obtained by misrepresentation.

135. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Illustrations.

(*a.*) B. owes C. 800 *l.* C. agrees to advance B. 2,000 *l.* on his obtaining a surety for that amount. It is also agreed between B. and C. that the 800 *l.* should be deducted from that sum. The agreement, which is in writing, states that C. had agreed to advance B. 2,000 *l.*, and that the 800 *l.* had been repaid. This agreement is read to A. in C.'s presence, but nothing more is said, when A. gives a promissory note for 2,000 *l.* as surety for B. A. is discharged from liability on the note, as there is a false representation to A. that the 800 *l.* had been paid, and that the whole sum of 2,000 *l.* was to be advanced to B.

(*b.*) C. represents to A. that he is liable to D. for 3,000 rupees as surety for A. and B. A. thereupon concurs as surety in a mortgage security given by B. in order to indemnify C. C., in fact, was not liable to D. as alleged. A. is not bound by the security.

Guarantee obtained by concealment.

136. Any guarantee which the creditor has obtained by means of the concealment of a material circumstance, is invalid.

Illustrations.

(*a.*) A. engages B. as clerk to collect money for him. B. fails to account for some of his receipts, and A. in consequence calls upon him to furnish security for his duly accounting. C. gave his guarantee for B.'s duly accounting. A. does not acquaint C. with B.'s previous conduct. B. afterwards makes default. The guarantee is invalid.

(*b.*) A. guarantees to C. payment for iron to be supplied by him to B. to the amount of 2,000 tons. B. and C. have privately agreed that B. should pay 5 rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A. is not liable as a surety.

Guarantee on agreement that creditors shall not act on it until co-surety joins.

137. Where a person gives a guarantee upon an agreement that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied agreement to indemnify surety.

138. In every contract of guarantee there is an implied agreement by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee.

Illustrations.

(*a.*) B. is indebted to C., and A. is surety for his debt. C. demands payment from A., and on his refusal sues him for the amount. A. defends the suit, at the request of B., having reasonable grounds for doing so, but he is compelled to pay the amount of the debt with costs. He can recover from B. the amount paid by him for costs, as well as the principal debt.

(*b.*) C. lends B. a sum of money, and A., at the request of B., accepts a bill of exchange drawn by B. upon A. to secure the amount. C., the holder of the bill, demands payment of it from A., and on A.'s refusal to pay sues A. upon the bill. A. defends the suit, and has to pay the amount of the bill and costs. He can recover from B. the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c.*) A. guarantees to C, to the extent of 2,000 rupees, payment of rice to be supplied by C. to B. C. supplies to B. rice to a less amount than 2,000 rupees, but obtains from A. payment of the sum of 2,000 rupees in respect of the rice supplied. A. cannot recover from B. more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

139. Where two or more persons are co-sureties for the same debt or duty either jointly or severally, and whether under the same or different agreements, and whether with or without the knowledge of each other, the co-sureties, in the absence of any agreement to the contrary, are liable as between themselves to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

Illustrations.

(*a.*) A., B., and C. are sureties to D. for the sum of 3,000 rupees lent to E. E. makes default in payment. A., B., and C. are liable as between themselves to pay 1,000 rupees each.

(*b.*) A., B., and C. are sureties to D. for the sum of 1,000 rupees lent to E., and it is arranged between A. B., C., and E. that A. is to be responsible to the extent of one quarter, B. to the extent of one-quarter, and C. to the extent of one-half. E. makes default in payment. As between the sureties, A. is liable to pay 250 rupees, B. 250 rupees, and C. 500 rupees.

Liability of co-sureties bound in different sums.

140. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a.* A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 30,000 rupees. A., B., and C. are each liable to pay 10,000 rupees.

(*b.*) A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 40,000 rupees. A. is liable to pay 10,000 rupees, and B. and C. 15,000 rupees each.

(*c.*) A., B., and C., as sureties for D., enter into three several bonds, each in a different penalty, viz., A. in the penalty of 10,000 rupees, B. in that of 20,000 rupees, C. in that of 40,000 rupees, conditioned for D.'s duly accounting to E. D. makes default to the extent of 70,000 rupees. Each has to pay the full penalty of his bond.

PART VI.—OF BAILMENT.

"Bailment," "bailor," and "bailee" defined.

141. THE delivery of goods by one person to another for some purpose, upon an agreement that they shall be delivered by the latter back to or according to the directions of the former when the purpose shall have been accomplished, is called a bailment. The person delivering the goods is called the bailor. The person to whom they are delivered is called the bailee.

Delivery to bailee, how made.

142. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee, or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

143. The bailor is bound to disclose to the bailee faults in the goods bailed of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Illustration.

A. lends a horse to B. which he knows to be vicious. He does not disclose the fact that the horse is vicious. The horse runs away. B. is thrown and injured. A. is responsible to B. for damage sustained.

Care to be taken by bailee.

144. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value of the goods bailed.

Bailee when not liable for loss, &c. of thing bailed.

145. The bailee, in the absence of any agreement to the contrary, is not responsible for the loss, destruction, or deterioration of the thing bailed if not caused by his fault.

Termination of bailment by bailee's act inconsistent with conditions.

146. If the bailee does any act with regard to the goods bailed which is inconsistent with the conditions of the bailment, such act is, at the option of the bailor, a termination of the bailment.

Illustration.

A. lets to B. for hire a horse for his own riding. B. drives the horse in his carriage. This is at the option of A., a termination of the bailment.

Liability of bailee making unauthorised use of goods bailed.

147. If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations.

(*a.*) A. lent a horse to B. for his own riding only. B. allowed C., a member of his family, to ride the horse. C. rode with care, but the horse accidentally fell and was injured. B. is liable to make compensation to A. for the injury done to the horse.

(*b.*) A. hired a horse in Calcutta from B. to ride to Benares. A. rode with due care, but rode to Cuttack instead. The horse accidentally fell and was injured. A. is liable to make compensation to B. for the injury to the horse.

Mixture of Goods bailed.

Mixture, with bailor's consent, of his goods with goods of bailee.

148. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest in proportion to their respective shares in the mixture thus produced.

Mixture, without bailor's consent, when the goods can be separated.

149. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated, the property in the goods remains in the parties

parties respectively, but the bailee is bound to bear the expense of separation, and any damage arising from the mixture.

Mixture, without bailor's consent, when the goods cannot be separated.

150. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods so that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Re-payment by bailor of necessary expenses.

151. Where by the conditions of the bailment the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall re-pay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods bailed gratuitously.

152. Where the bailment is gratuitous, the bailor is entitled at any time, upon reasonable notice, to the restoration of the goods bailed.

Return of goods bailed on expiration of time or accomplishment of purpose.

153. The bailee must return the goods bailed without demand as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly delivered or tendered.

154. If by the fault of the bailee the goods are not delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Termination of gratuitous bailment by death.

155. The bailment, where gratuitous, is terminated by the death either of the bailor or of the bailee.

Increase or profit from goods bailed.

156. In the absence of any agreement to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration.

A. leaves a cow in the custody of B., who takes care of it gratuitously. The cow has a calf. B. is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee.

157. The bailor is responsible to the bailee for any loss which he may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailment by several joint owners.

158. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of one joint owner without the consent of all, in the absence of any agreement to the contrary.

Re-delivery to bailee who has no title.

159. If the bailor has no title to the goods, and the bailee delivers them back to, or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery.

Right of third person claiming goods bailed.

160. If a third person claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods.

161. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner, but he has a right to retain the goods against the owner until he receives such compensation; and where the owner offers a specific reward for the return of goods lost, the finder has a right to retain them until he receives the reward.

Bailee's particular lien.

162. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill on the goods bailed, he has, in the absence of any agreement to the contrary, a right to retain the goods until he receives remuneration for the services he has rendered in respect of them.

Illustrations.

(*a.*) A. delivers a rough diamond to B., a jeweller, to be cut and polished, which is accordingly done. B. is entitled to retain the stone till he is paid for the services he has rendered.

(*b.*) A. gave some cloth to B., a tailor, to make into a coat. A. agreed with B. that the coat should be delivered as soon as it was finished, and that three months' credit should be given for the price. B. is not entitled to retain the coat until he is paid.

Banker's, factors, and wharfingers have no general lien.

163. In the absence of any agreement to the contrary, bankers, factors, and wharfingers have no right to retain the goods bailed to them as a security for a general balance of account.

Pledge.

"Pledge," "pawnor," and "pawnee" defined.

164. The bailment of goods as security for payment of a debt or performance of an engagement is called pledge. The bailor is in this case called the pawnor. The bailee is called the pawnee.

Pawnee's right of retainer.

165. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of engagement, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession, or for the preservation of the goods pledged.

In case of subsequent advances.

166. The pawnee shall not retain the goods pledged for any other debt or engagement than the debt or engagement for which they are delivered, except by agreement between the parties; but such agreement, in the absence of anything to the contrary, will be presumed in regard to subsequent advances made by the pawnee.

Extraordinary expenses incurred by pawnee.

167. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default.

168. If the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, the pawnee may bring a suit against the pawnor upon the debt or engagement, and retain the goods pledged as a collateral security, or may sell the thing pledged on giving the pawnor reasonable notice of the sale. If the proceeds of the sale are less than the amount due in respect of the debt or engagement, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem.

169. If a time is stipulated for the payment of the debt or performance of the engagement for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the engagement at the stipulated time, he may redeem the goods pledged at any time before the actual sale of them.

Pledge by possessor of documentary title to goods.

170. A person who is in possession of goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents: provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly.

Pledge where pledger has only a limited interest.

171. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits against wrong-doers.

Suits by bailor or bailee against wrong-doers.

172. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entiled to use such remedies as the owner might use in the like case if no bailment had been made, and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of proceeds of such suits.

173. Whatever is obtained by way of relief or compensation in any such suit, shall, as between the bailor and the bailee, be dealt with according to their respective interests.

PART VII.—OF AGENCY.

"Agent" and "principal" defined.

174. An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom the act is done, or who is so represented, is called the principal.

Who may be a principal.

175. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

176. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal, according to the provisions in that behalf herein contained.

Agency created without consideration.

177. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

178. The authority of an agent may be expressed or implied.

Definitions of expressed and implied authority.

179. An authority is said to be expressed when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be accounted circumstances of the case.

Illustration.

A. owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B., and he is in the habit of ordering goods from C. in the name of A. for the purposes of the shop, and of paying for them out of A.'s funds with A.'s knowledge. B. has an implied authority from A. to order goods from C. in the name of A. for the purposes of the shop.

Extent of agent's authority.

180. An agent having an authority to do any act, has authority to do every lawful thing which is necessary in order to do such act; and an agent having an authority to carry on any business, has authority to do every lawful thing necessary for the purpose of or usually done in the course of conducting such business.

Illustrations.

(*a*) A. is employed by B., residing in London, to recover at Bombay a debt due to B. A. may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*.) A. constitutes B. his agent to carry on his business of a ship-builder. B. may purchase timber and other materials, and hire workmen for the purpose of carrying on the business.

Agent's authority in an emergency.

181. An agent has authority in an emergency to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence in his own case under similar circumstances.

Illustrations.

Illustrations.

(*a.*) A. ship is driven on shore. The master has authority to hire men and boats to get her off, and to incur all necessary expenses for re-fitting her.

(*b.*) A. consigns provisions to B. at Calcutta, with directions to send them immediately to C. at Cuttack. B. may sell the provisions at Calcutta, if they will not bear the journey without spoiling.

Enforcement and consequences of agent's contracts.

182. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a.*) A. buys goods from B., knowing that he is an agent for their sale, but not knowing who is the principal. B.'s principal is the person entitled to claim from A. the price of the goods, and A. cannot set off against that claim a debt due to himself from B.

(*b.*) A. being B.'s agent, with authority to receive money on his behalf, receives from C. a sum of money due to B. C. is discharged of his obligation to pay the sum in question to B.

Principal, how far bound when agent exceeds authority.

183. Where an agent does more than he is authorised to do, what he does within the scope of his authority, if it can be separated from what is beyond that scope, is binding as between the principal and the agent; the rest not.

Illustration.

A., being owner of a ship and cargo, authorises B. to procure an insurance for 4,000 rupees on the ship. B. procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A. is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

When excess of agent's authority is not separable.

184. Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the whole is void as against the principal.

Illustration.

A. authorises B. to buy 500 sheep for him. B. buys 500 sheep and 200 lambs for one sum of 6,000 rupees. The whole transaction is void as against A.

"Sub-agent" defined.

185. A sub-agent is a person employed by and acting under the control of the original agent in the business of the agency.

When agent cannot delegate.

186. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally.

Representation of principal by sub-agent properly appointed. Agent's responsibility for sub-agent. Sub-agent's responsibility.

187. Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub-agent, the sub-agent is responsible for his acts to the agent but not to the principal, except in cases of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

188. Where an agent has appointed a person to act as a sub-agent without having authority to do so, the agent stands towards that person in relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons, and the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation to principal of person named by agent authorised to name another to act for principal.

189. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly; such person is not a sub-agent, but an agent of the principal for such part of the business of the ageney as is entrusted to him.

Illustrations.

(*a.*) A. directs B., his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B. names C., an auctioneer, to conduct the sale. C. is not a sub-agent, but is A.'s agent for the conduct of the sale.

(*b.*) A., a merchant in Calcutta, consigns goods to B., a merchant in London, and directs him to sell the goods. B. appoints C., a broker, to sell the goods for A. C. is not a sub-agent, but is agent for A.

(*c.*) A. appoints B., a merchant in Calcutta, his attorney, for the purpose of recovering the monies due to A. from C. and Co. B. instructs D., a solicitor, to take legal proceedings against C. and Co. for the recovery of the money. D. is not a sub-agent, but is solicitor for A.

Agent's duty in naming such person.

190. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case, and if he does this he will not be responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a.*) A. directs B. to buy and ship a cargo of indigo for him, and to have the cargo properly insured. B. employs an insurance broker of good reputation, who effects an insurance on the cargo. The ship, having the cargo on board, is lost; but owing to the omission of some usual stipulations in the policy of assurance, the underwriters refuse to pay the sum insured. B. is not responsible to A. for the loss, but the insurance broker is.

(*b.*) B., the agent of A., employs an auctioneer in good credit to sell goods of A., and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent, without having accounted for the proceeds. B. is not responsible to A. for the proceeds.

Agent's duty in conducting principal's business.

191. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom

custom which prevails in doing business of the same kind. When the agent adopts a different course, if any loss be sustained, he must make it good to his principal, and if any profit accrues he must account for it.

Illustrations.

(*a.*) A., an agent engaged in carrying on for B. a business in which it is the custom to invest from time to time at interest the monies which may be in hand, omits to make such investment. A. must make good to the principal the interest usually obtained by such investments.

(*b.*) B., a broker, in whose business it is not the custom to sell on credit, sells goods of A. on credit to C., whose credit at the time was very high. C., before payment, becomes insolvent. B. must make good the loss to A.

Skill and diligence required from agent.

192. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations.

(*a.*) A., a merchant in Calcutta, has an agent B. in London, to whom a large sum of money is paid on A.'s account. B. improperly retains the money for a considerable time. A., in consequence of not receiving the money, becomes insolvent. B. is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, but not further.

(*b.*) A., an agent for the sale of goods, having authority to sell on credit, sells to B., on credit, without making the proper and usual inquiries as to the solvency of B. B., at the time of such sale, is insolvent. A. must make compensation to his principal in respect of any loss thereby sustained.

(*c.*) A., an insurance broker employed by B. to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A. is bound to make good the loss to B.

(*d.*) A., a merchant in England, directs B., his agent at Bombay, to send him 100 bales of cotton by a certain ship. B., having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B. is bound to make good to A. the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

193. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal.

194. It is the duty of an agent in cases of difficulty to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

Agent dealing on his own account in business of agency without principal's consent.

195. If a person who is an agent deals on his own account in the business of the agency without first obtaining the consent of the principal, and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal is at liberty, on discovering such circumstances, either to adopt or to repudiate the transaction.

Illustrations.

(*a.*) A. directs B. to sell A.'s estate. B. buys the estate for himself in the name of C. A., on discovering that B. has bought the estate for himself, may either repudiate or adopt the sale at his option.

(*b.*) A. directs B. to sell A.'s estate. B. on looking at the estate before selling it, finds a mine on the estate which is unknown to A. B. informs A. that he wishes to buy the estate for himself, but conceals the discovery of the mine. A. allows B. to buy, in ignorance of the existence of the mine. A., on discovering that B. knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Agent dealing on his own account with principal in business of agency, not entitled to remuneration.

196. An agent dealing on his own account with his principal in the business of the agency is not entitled to any remuneration as agent, notwithstanding that the principal adopts the transaction.

Illustration.

A. agrees that if B. will find a purchaser for his land in Bombay at two rupees a yard, A. will give B five per cent. commission. B. afterwards buys on his own account, and A. adopts the contract. B. is not entitled to any commission.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

197. If an agent without the knowledge of his principal deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A. directs B. to buy a certain house for him. B. tells A. it cannot be bought, and buys the house for himself. A. may, on discovering that B. has bought the house, compel him to sell it to A. at the price he gave for it.

Agent's right of retainer out of sums received on principal's account.

198. An agent may retain, out of any sums received on account of the principal in the business of the agency, all monies due to himself in respect of advances made or expenses incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal.

199. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

200. In

When agent's remuneration becomes due.

200. In the absence of any agreement to the contrary, remuneration in respect of the performance of any act is not due to the agent until the completion of such act.

Misconduct disentitles agent to remuneration.

201. An agent who is guilty of gross misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which has been so misconducted.

Illustrations.

(*a.*) A. employs B. to recover 1,00,000 rupees from C. and lay it out on good security. B. recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on insufficient security, whereby A. loses 2,000 rupees. B. is entitled to remuneration for recovering the 1,00,000 rupees, and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b.*) A. employs B. to recover 1,000 rupees from C. Through B's misconduct the money is not received. B. is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's goods and papers.

202. In the absence of any agreement to the contrary, an agent is entitled to retain goods, papers, and other property of the principal received by him, until the amount due to himself for commission, disbursements, and sevices in respect of the same has been paid or accounted for to him.

Ratification.

Effect of ratification.

203. Where acts are done by one person on behalf of another, but without his knowledge, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

204. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustration.

A. without authority buys goods for B. Afterwards B. sells them to C. on his own account. B.'s conduct implies a ratification of the purchase made for him by A.

Knowledge requisite to valid ratification.

205. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorised act forming part of a transaction.

206. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Ratification of unauthorised act cannot injure third person.

207. An act done without authority, which, if done with authority, would have the effect of subjecting a third person to damage or of terminating any right or interest of a third person, cannot by ratification be made to have such effect.

Illustrations.

(*a.*) A., an unauthorized person, requires on account of B., the owner of a chattel, the delivery of the chattel to B. This demand cannot be ratified by B. so as to make the holder liable for damages for default.

(*b.*) A. holds a lease from B. terminable on three months' notice. C., an unauthorised person, gives notice of termination to A. The notice connot be ratified so as to be binding on A.

Consequences of notice given to agent.

208. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a.*) A. is employed by B. to buy certain goods from C., and buys them accordingly. In the course of the treaty for the sale A. learns that the goods really belonged to D., but B. is ignorant of that fact. B. is not entitled to set off a debt owing to him from C. against the price of the goods.

(*b.*) A. is employed by B. to buy goods from C. A. was, before he was so employed, a servant of C., and then learnt that the goods really belonged to D., but B. is ignorant of that fact. In spite of the knowledge of his agent, B. may set off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce nor be bound by contracts on behalf of principal.

209. In the absence of any agreement to the contrary, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Implication of agreement to contrary.

Explanation.—Such an agreement may be implied in the following cases:—

(1.) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad.

(2.) Where the agent does not disclose the name of his principal.

(3.) Where the principal, though disclosed, cannot be sued.

Performance of contract with agent supposed to be principal.

210. Where one man enters into an engagement by contract with another, having no knowledge or reasonable ground of suspicion that the other is an agent, the principal, if he requires the performance of the engagement, can only obtain it, subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A., who owes 500 rupees to B., sells 1,000 rupees' worth of rice to B. A. is acting as agent for C. in the transaction, but B. has no knowledge nor reasonable ground of suspicion that such is the case. C. cannot compel B. to take the rice without allowing him to set off A.'s debt.

Principal's liability where agent personally liable.

211. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

Illustration.

A. enters into a contract with B. to sell him 100 bales of cotton, and afterwards discovers that B. was acting as agent for C. A. may sue either B. or C., or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

212. A person who enters into a contract with an agent, if he afterwards induces the agent to do any act in the belief that the principal will be held exclusively liable on the contract, cannot hold the agent liable; and in like manner if he induces the principal to do any act in the belief that the agent will be held exclusively liable, he cannot hold the principal liable.

Illustration.

A., in Bombay, agrees as agent for B., a merchant in London, to buy 100 bales of cotton from C. C. intimates to B. that he intends to hold A. exclusively liable for the price of the cotton, and B. relying upon this intimation settles his account with A., giving A. credit for the price of the cotton. A. afterwards becomes bankrupt without having paid the price of the cotton to C. C. cannot hold B. liable for the price of the cotton.

Liability of pretended agent.

213. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his supposed employer does not ratify his acts, to make compensation to the other, according to the rules laid down in the chapter on contracts, section 50, in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent, not entitled to performance.

214. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it, if he was in reality acting not as agent, but on his own account.

Liability of principal inducing belief that agent's unauthorized acts were authorized.

215. When an agent has without authority done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he had by his words or conduct induced such persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations.

(*a.*) A. consigns goods to B. for sale, and gives him verbal instructions not to sell under a fixed price. C. being ignorant of B.'s instructions enters into an agreement with B. to buy the goods at price lower than the reserved price. A. is bound by the agreement.

(*b.*) A. knows that B. is an agent of C., and acting under written instructions from C., but makes an agreement with B., as C.'s agent, without asking to see the instructions. The terms of the agreement are contrary to the instructions. C. is not bound by the agreement.

Ship-master's authority to sign bill of lading.

216. The master of a ship has not, as such, any authority to sign bills of lading without receiving the goods to which they refer.

Master's liability for injuries caused by his servant.

217. A master is bound to make compensation to third persons for injuries caused by the negligence or unskilfulness of his servant acting as such, but not for his wilful misconduct.

Illustrations.

(*a.*) A.'s coachman, driving A.'s carriage on A.'s business, strikes B.'s horses, not wantonly, but in order to extricate himself from a difficulty, and causes the horses to run away, in consequence of which B.'s carriage is overturned and broken. A. is liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(*b.*) A.'s coachman, driving A.'s coach on A.'s business, wantonly strikes B.'s horses, which run away, in consequence of which B.'s carriage is overturned and broken. A. is not, but his coachman is, liable to make compensation to B. in respect of the loss or damage caused to him by the breaking of the carriage.

(*c.*) The commander of A.'s ship, navigating the ship on A.'s business, through negligence runs over B.'s boat. A. is liable to make compensation to B. in respect of loss or damage caused to him thereby.

(*d.*) The commander of A.'s ship, navigating the ship on A.'s business, intentionally runs over B.'s boat. A. is not, but the commander is, liable to make compensation to B. in respect of loss or damage caused to him thereby.

(*e.*) A.'s coachman driving A.'s coach, but not on A.'s business, through negligence runs over B., who thereby sustains severe bodily injury. A. is not, but the coachman is, liable to make compensation to B. in respect of such injury.

(*f.*) A. employs B. to act as conductor of his omnibus. C. enters the omnibus, and having behaved improperly there, is removed by B. with unnecessary violence. In consequence of B.'s violence C. is seriously injured. A. is not, but B. is, liable to make compensation to C. in respect of the effects of such injury.

(*g.*) A. was in the habit of buying corn and directing the vendor to deliver it at B.'s wharf, and of paying for the corn on the production of the receipt of B. or his servant. B.'s servant, whose duty it was to receive the corn, and give receipts for it on behalf of B., gave C. a receipt for corn that had never been delivered, and thus enabled C. to obtain money from A. B. is not liable to make compensation to A. in respect of the loss caused to him by the conduct of B.'s servant.

Employer's responsibility for injuries caused to third person in doing lawful act.

218. A person who employs another to do a lawful act, otherwise than as a servant, is not responsible for injuries caused to third persons in the doing of that act by the negligence or unskilfulness of the person employed, except in any case where the injuries may have been caused by conduct which the employer had authorised or adopted.

Illustrations.

(*a.*) A. employs B., a builder, to pull down and rebuild A.'s house. In consequence of the negligence of B.'s workmen in pulling down the house, the front of C.'s house, which adjoins A.'s, falls down. A. is not liable to make good the loss to C., but B. is.

(*b.*) A. employs B., a builder, to execute certain alterations in a house, including the preparation and fixing of gas fittings. B. makes a sub-contract with C., a gas-fitter, to execute this part of the work. D. is injured by an explosion of gas, caused by C.'s negligence. C. is, but A. and B. are not, liable to make compensation to D. in respect of such injury.

Responsibility for injuries arising from non-performance of act which a person is bound to do.

219. A person who is bound to do any act is responsible for all injuries arising from the non-performance of such act, although he may have employed another to do it.

Illustrations.

(*a.*) A. is bound to repair the wall of his house, which is in a dangerous state. He employs B. to repair it. B. omits to do so. The wall falls down; and in doing so draws with it a part of an adjoining house belonging to C. A. is liable to make good the loss to C.

(*b.*) A. is bound to cover in a drain in front of his house, and employs B. to do so. B. neglects to cover in the drain; in consequence of B.'s negligence C. falls into the drain, and is hurt. A. must make compensation to C.

Compensation for injuries caused by act of person employed to do the act. Master's liability for injury to one servant by misconduct, &c., of another.

220. A person employing another to do any act is bound to make compensation to third persons in respect of injuries caused directly by such act.

Exception.—Where two persons are engaged as agents or servants to the same master for a common object, the master is not bound to make compensation to one servant in respect of loss or damage arising from the misconduct, negligence, or want of skill of the other, unless he neglected to use ordinary care in the selection of the servant who has caused the injuries.

Illustrations.

(*a.*) A. employs B. to build a house according to a particular plan. The house cannot be built without obscuring the lights of a neighbour's house. The house is built accordingly. A. is liable to make good the loss or damage thereby sustained by the neighbour.

(*b.*) The guard of a train is injured through the neglect of the plate-layers to keep the line in proper order. Ordinary care had been used in the selection of the plate-layers. The railway company is not liable to indemnify the guard.

Compensation to agent for injury caused by principal's neglect.

221. The master must make compensation to his agent or servant in respect of injury caused to such agent or servant by the master's neglect or want of skill.

Illustration.

A. employs B. as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B. is in consequence hurt. A. must make compensation to B.

Profit resulting from agent's fraud.

222. The principal cannot retain any profit resulting from the fraud of his agent, although such fraud have been unauthorised by or unknown to the principal.

Agent's responsibility for injuries arising from neglect.

223. An agent is not responsible to third persons for injuries to them arising from his neglect of duty, but he his bound to make compensation to his employer in respect of all sums properly paid by him on account of such injuries.

Illustration.

A. is bound to cover in a drain in front of his house, and employs B. to do so. B neglects to cover in the drain; in consequence of B.'s negligence, C. falls into the drain, and is hurt. B. is not liable to make compensation to C.; but B. must make compensation to A. in respect of any compensation which A. has been compelled to make to C.

Agent's responsibility for wrongful acts.

224. An agent is in all cases responsible to third persons for wrongful acts done by him, though such acts may have been previously commanded or subsequently ratified by his employer.

Termination of agency.

225. An agency is terminated by the principal revoking his authority or by the agent renouncing the business of the agency, or by the business of the agency being completed, or by either the principal or agent dying or becoming of unsound mind: or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

Where agency is coupled with an interest.

226. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot be terminated to the prejudice of such interest.

Illustrations.

(*a.*) A. gives authority to B. to sell A.'s land, and to pay himself out of the proceeds the debts due to him from A. A. cannot revoke this authority, nor can it be terminated by his insanity or death.

(*b.*) A. consigns 1,000 bales of cotton to B., who has made advances to him on such cotton, and desires B. to sell the cotton, and to repay out of the price the amount of his own advances. A. cannot revoke this authority, nor is it terminated by his insanity or death.

Revocation of agent's authority.

227. The principal may (save as is otherwise provided by the last preceding section) revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised.

228. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations.

(*a.*) A. authorizes B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in his hands. B. buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A. cannot revoke his authority so far as regards payment for the cotton.

(*b.*) A. authorises B. to buy 1,000 bales of cotton on account of A., and to pay for it out of A.'s monies remaining in B.'s hands. B. buys 1,000 bales of cotton in A.'s name, and so as not to render himself personally liable for the price. A. can revoke B.'s authority to pay for the cotton.

Compensation for revocation or renunciation.

229. If it has been agreed expressly or by implication that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation.

230. Reasonable notice must be given of such revocation or renunciation, or the damage thereby resulting to the principal or the agent, as the case may be, must be made good to him by the other.

Revocation and renunciation may be expressed or implied.

231. Revocation and renunciation may be expressed, or may be implied in the conduct of the principal or agent respectively.

Illustration.

A. empowers B. to let A.'s house. Afterwards A. lets it himself. This is an implied revocation of B.'s authority.

When termination of agent's authority takes effect.

232. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes know to them.

Illustrations.

(*a.*) A. directs B. to sell goods for him, and agrees to give B. 2 per cent. commission on the price fetched by the goods. A. afterwards by letter revokes his authority B., after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A., and B. is entitled to 2 rupees as his commission.

(*b.*) A., at Madras, by letter directs B. to sell some cotton lying in a warehouse in Bombay for him, and afterwards by letter revokes his authority to sell, and directs B. to send the cotton to Madras. B. after receiving the second letter enters into a contract with C., who knows of the first letter, but not of the second, for the sale to him of the cotton. C. pays B. the money, with which B. absconds. The contract is binding on A.

Agent's duty on termination of agency by principal's death or insanity.

233. When an agency is terminated by the principal dying or becoming of unsound mind the agent is bound to take all reasonable steps for the protection and preservation of the interest intrusted to him.

Illustrations.

(*a.*) A., in London, consigns to his agent B., at Calcutta, for sale, a cargo of porcelain. A. dies. B.'s duty, under ordinary circumstances, is to warhouse and retain the porcelain.

(*b.*) A., in New York, consigns to B., in Calcutta, for sale, a cargo of ice. A. dies. It is B.'s duty to sell the ice as soon as possible.

Termination of sub-agent's authority.

234. The termination of the authority of an agent causes the termination of the authority of all sub-agents appointed by him, subject to the rules herein contained regarding the termination of an agent's authority.

PART VIII.—Of Partnership.

'Partnership' defined.

235. Partnership is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

'Firm' defined.

Persons who have entered into partnership with one another are called collectively a firm.

Illustrations.

(*a.*) A. and B. buy 100 bales of cotton, which they agree to sell for their joint profit; A. and B. are partners in respect of such cottton.

(*b.*) A. and B. buy 100 bales of cotton, agreeing to share it between them. A. and B. are not partners.

(*c.*) A agrees with B., a goldsmith, to buy and furnish gold to B., to be worked up by him and sold, and that they shall share in the profits. A. and B. are partners.

(*d.*) A. and B. agree to work together as carpenters, but that A. shall receive all profits, and shall pay wages to B. A. and B. are not partners.

(*e.*) A. and B. are joint owners of a ship. This circumstance does not make them partners.

236. A loan to a person engaged or about to engage in any trade or undertaking upon a contract with such person, that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.

Lender not a partner by advancing money for share of profits.

237. In the absence of any agreement to the contrary, property left by a retiring partner or the representative of a deceased partner to be used in the business, is to be considered a loan within the meaning of the last preceding section.

Property left in business by retiring partner or deceased partner's representative.

238. No contract for the remuneration of a servant or agent of any person engaged in any trade or undertaing by a share of the profits of such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.

Contract for servant's remuneration by share of profits.

239. No person being a widow or child of a deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.

Annuity out of profits to widow or child of deceased partner.

240. No person receiving by way of annuity or otherwise a portion of the profits of any business, in consideration of the sale by him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities.

Portion of profits received for sale of good-will.

241. A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm.

Responsibility of person leading another to believe him a partner.

242. Any one permitting himself to be represented as a partner is liable as such to third persons who, on the faith thereof, give credit to the partnership.

Liability of person permitting himself to be represented as a partner.

243. A person who is under the age of majority, according to the laws to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm.

Minor partner.

244. A person who has been admitted to the benefits of partnership under the age of majority, becomes, on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice within a reasonable time of his repudiation of the partnership.

Liability of minor partner on attaining majority.

245. Every partner is liable for all debts and obligations incurred by or on behalf of the partnership.

Partner's liability for debts of partnership.

246. Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm.

Partner's liability to third person for neglect or fraud of co-partner.

247. Each partner who does any act necessary for or usually done in carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Partner's power to bind co-partners.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations.

(*a.*) A. and B. trade in partnership; A. residing in England, and B. in India. A. draws a bill of exchange in the name of the firm. B. has no notice of the Bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the fraud.

(*b.*) A., being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bills.

(*c.*) A. and B. carry on business in partnership as bankers: a sum of money is received by A. on behalf of the firm. A. does not inform B. of such payment, and afterwards A. appropriates the money to his own use. The partnership is liable to make good the money.

(*d.*) A., a partner, takes upon him to agree that his firm shall submit to an arbitration. His undertaking is void.

(*e.*) A. and B. are partners. A., with the intention of cheating B., goes to a shop and purchases articles such as might be used in the partnership business, which he converts to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods.

248. Where partners have by agreement regulated and defined as between themselves their rights and obligations, such agreement can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Annulment of agreement defining partners' rights and obligations.

Illustration.

A., B., and C., intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the net profits arising from the partnership business shall be equally divided between them. Afterwards, they carry on the partnership business for many years, A. receiving one-half of the net profits, and the other half being divided equally between B. and C. without any remonstrance on their part. This course of dealing supersedes the provision in the articles as to the division of profits.

General rule determining partner's mutual relations.

249. In the absence of any agreement to the contrary, the relations of the partners to each other are determined by the following rules :—

(1.) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

(2.) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership.

(3.) Each partner has a right to take part in the management of the partnership business.

(4.) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business.

(5.) All ordinary matters of partnership business may be done with the consent of the majority of the partners ; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners.

(6.) No person can introduce a new partner into a firm without the consent of all the partners.

(7.) If, from any cause whatsoever, any member of a partnership ceases to be so, the parnership is dissolved as between all the other members.

(8.) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time.

(9.) Where a partnership has been entered into for a fixed term, no partner can during such term retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever.

(10.) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner.

When Court may dissolve partnership.

250. At the suit of a partner the court may dissolve the partnership in the following cases :—

(1.) When a partner becomes of unsound mind.

(2.) When a partner other than the person suing has been adjudicated an insolvent under any law relating to insolvent debtors.

(3.) When a partner other than the person suing has done any act by which the whole interest of such partner is legally transferred to a third person.

(4.) When any partner becomes incapable of performing his part of the partnership contract.

(5.) When a partner other than the person suing is guilty of gross misconduct in the affairs of the partnership or towards his partners.

(6.) When the business can only be carried on at a loss.

Dissolution of partnership by prohibition of business.

251. A partnership is in all cases dissolved by its business being prohibited by law.

Application of original terms to partnership continued under them.

252. If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

General duties of partners.

253. Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner, or his legal representatives.

Benefit derived from transaction affecting partnership.

254. A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations.

(*a.*) A. and B. are partners for the sale of a mineral of a certain description. A. keeps a shop near a mine where this mineral is found, and buys it from the miners, giving them goods in which he deals in exchange. A. must account to B. for the profit which he obtains by selling his own goods, as well as for that which he derives from the sale of the mineral.

(*b.*) A., B., and C. are partners in trade.. C., without the knowledge of A. and B., obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A. and B. are entitled to participate, if they please, in the benefit of the lease.

(*c.*) A., B., and C. carry on business together in partnership as merchants, trading between Bombay and London. D., a merchant in London, to whom they make their consignments, secretly allows C. a share of the commission which he receives upon such consignments, in consideration of C.'s using his influence to obtain the consignments for him. C. is liable to account to the firm for the money so received by him.

255. If

255. If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby. **Profits made in competing business.**

256. Every person introduced as a partner into a pre-existing firm, is subject to all the obligations incurred by the firm before he was introduced. **Liability of incoming partner.**

257. A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm, is not revoked as to future transactions by any change in the firm to which, or in respect of the transactions of which, such guarantee was given. **Non-revocation of continuing guarantee by change in firm.**

258. The estate of a partner who has died is not liable in respect of any obligation incurred by the firm after his death. **Non-liability of deceased partner's estate for subsequent obligations.**

259. Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be paid to him or applied in payment of his separate debts. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm. **Payment of partnership-debts, and of separate debts.**

260. After a dissolution of partnership the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership. **Continuance of partners' rights and obligations after dissolution.**

261. Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they had themselves notice of such dissolution. **Notice of dissolution.**

262. In the absence of any agreement to the contrary, after the termination of a partnership, each partner, or his representatives, may apply to the Court to wind up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively. **Winding-up by Court after termination of partnership.**

263. Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint stock companies, shall be regulated by the law now in force in India relating thereto, until further provision shall be made in that behalf. **Limited-liability partnerships, incorporated partnerships, and joint stock companies.**

FIRST SCHEDULE.

Number of Statute or Act.	Title of Act.	Extent of Repeal.
Stat. 29 Car. 2, c. 3 -	An Act for prevention of Frauds and Perjuries	Sections 1, 2, 3, 4, and 17.
Stat. 11 & 12 Vict. c. 21	To consolidate and amend the law relating to insolvent debtors in India.	Section 42.
Act XIII. of 1840 -	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by the English law, the provisions of the statute 4 Geo. 4, c. 83, as altered and amended by the statute 6 Geo. 4, c. 94.	The whole.
Act. XIV. of 1840 -	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of statute 9 Geo. 4, c. 14.	The whole, except Section 4.
Act V. of 1866 - -	To provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Section 10.
Act XV. of 1866 -	To amend the law of Partnership in India -	The whole.

SECOND SCHEDULE.

Number of Statute or Act.	Title of Act.	Extent of Saving.
Act XI. of 1841 - -	Military Courts of Request Act - - -	Section 9.
Act XXI. of 1848 -	For avoiding wagers - - - - -	The whole.
Act VI. of 1849 -	For securing Military and Naval pensions and superannuation allowances.	Section 3.
Act XIX. of 1850 -	Concerning the binding of apprentices - -	Sections 8, 9, 10, 11, 12, and 22.
Act XVIII. of 1853 -	For regulating the sale of spirituous liquors, &c., in cantonments.	So much as is not repealed.
Act XVIII. of 1854 -	An act relating to railways in India - -	Sections 9, 10, and 11.
Stat. 17 & 18 Vict. c. 104	The Merchant Shipping Act, 1854 - -	Section 544.
Act I. of 1859 - -	For the amendment of the law relating to Merchant Seamen.	So much as relates to agreements with seamen.
Act XIII. of 1859 -	To provide for the punishment of breaches of contract by artificers, workmen, and labourers in certain cases.	The whole.
Act XV. of 1863 -	To amend Act I. of 1859 - - - -	Section 3.
Act III. of 1865 -	The Carriers' Act, 1865 - - - -	The whole.
Act XIV. of 1866 -	The Indian Post Office Act, 1866 - -	Section 65.
Act VIII. of 1867 -	To amend the law relating to Horse-racing in India.	The whole.

STATEMENT OF OBJECTS AND REASONS.

The Bill now submitted to the Council of the Governor General for making laws and regulations embodies the draft Law of Contract prepared under the superintendence of the Indian Law Commissioners. A series of sections, having reference to one particular subject, has been omitted for reasons which will be afterwards assigned; but, with this exception, no change has been made in the draft of the Commissioners other than the correction of some minor errors, of which a few appear to be either clerical or typographical.

"The Indian Contract Law"—which is the designation proposed for the measure—constitutes the second chapter transmitted to India of the intended Code of Substantive Civil Law. If it becomes law, it will differ in one important particular from the chapter which has already received legislative sanction. The "Indian Succession Act," so far at least as regards intestate succession, was never intended to include Hindoos and Mahometans, and the Indian Legislature further exempted Buddhists from its operation. But the Commissioners recommend, and the present Bill proposes, that the new Indian Contract Law shall be of universal application in India.

The recommendation of the Commissioners appears to be justified, not only by the abstract consideration that contract is the branch of law on which men of all times and races have come most nearly to identical conclusions, but also by the actual condition of the Law of Contract in India. The state of that law is thus described in general terms by the Commissioners:—

"Within the limits of the Presidency towns, the decision of suits of the nature is practically governed by the law of England, and everywhere else the judge is, to a great extent, without the guidance of any positive law beyond the rule that his decision shall be such as he deems to be in accordance with 'justice, equity, and good conscience.'"

This description needs only to be qualified by the remark that the decisions assumed to be dictated by "justice, equity, and good conscience," have of late years been much affected, as a fact, by the English Law of Contract, as gathered from the ordinary text books in use among English practitioners.

The largeness of the sphere practically occupied in India by the English Law of Contract, is in truth the justification of the course which has been followed by the Commissioners. Their draft will be found to consist of the English Law of Contract, much simplified, and altered

altered in some particulars so as to accommodate it to the circumstances of this country. As the sections relating to sale do not apply to the sale of immovable property, and as the law regarding negotiable instruments forms no part of the present measure, the amount of native law which it will displace will be extremely minute.

The principal changes which it is proposed to introduce into the English Law of Contract, considered as the basis of the present measure, are thus indicated by the Commissioners:—

"We have not adopted, in framing these rules, the provisions of the English Statute of Frauds which require certain contracts to be in writing. Those provisions are not of unquestionable expediency even in England; and we think that they are not suited to the habits and present condition of the people of India.

"We have considered whether it would be expedient to render binding in law promises made without consideration. By the English law such promises are held to be binding only when expressed in writings under seal. We have not recognized any distinction between writings under seal and writings not under seal; but we think that, in order to give validity to promises made without consideration, it ought to appear that they were made with due deliberation. In order to attain this object, we propose that such promises shall be binding only when they are given in writing, and are registered with the permission of the promisor, according to the provisions of the law for the time being in force for the registration of assurances.

"By the English law a promise by a creditor to give time for the payment of an existing debt, or the acceptance by him, in full satisfaction of his demand, of a smaller sum than that which is due to him, is not binding on him unless there has been some new consideration given for it, such as an undertaking to give an additional or different security, or to pay the debt in a manner or at a time more advantageous to the creditor than that originally agreed upon; or unless the creditor's engagement to take less than his due, or to give time, be contained in a composition deed or agreement entered into by the debtor with his creditors generally; but a slight variation of the terms of the contract will satisfy these conditions. We have provided, that a person who is entitled to claim performance of an engagement, may dispense with or remit such performance wholly or in part, or may accept instead of it any satisfaction which he thinks fit.

"With regard to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

"It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bonâ fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is therefore on the side of a rule, favourable to the purchaser; and we think that sound policy, with respect to the interests of commerce, points to the same conclusion.

"We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them.

"Similar provisions have been inserted, in accordance, we may observe, with the spirit of the Factors' Act, to meet the cases of those who have purchased goods or taken them by way of pledge from persons in possession of any documentary title to the goods, where the circumstances are not such as to raise a reasonable presumption that the person in possession of the document has no right to sell or to pledge the goods.

"It would seem that by the English law, if a buyer or any person claiming under him, is by reason of the invalidity of the seller's title deprived of the thing sold, he cannot claim compensation from the seller for loss thereby caused. We propose that in such cases the seller shall be responsible, unless a contrary intention appears by the agreement.

"In order to avoid the litigation which arises under the English law on the subject of the distinction between penalty and liquidated damages, where the contract contains a stipulation that a specified sum shall be paid in case of its breach, we propose that the rule of law shall have no regard to that distinction, but simply require payment of the specified sum.

"In dealing with the law of suretyship, we have not thought it right to recognise a transaction so complicated, and tending so much to the unfair devolution of liability on the surety, as that by which a creditor who makes a composition with, or agrees to give time to, or not to sue the principal, may yet reserve his rights and remedies against the surety. By the rule which we propose, an agreement between the creditor and the principal, by which the creditor makes a composition with, or agrees to give time to the principal, or not to sue him, will discharge the surety; no exception being made in favour of the creditor in the case where he has endeavoured to reserve his rights and remedies against the surety. From a wish to avoid subtleties, and the attaching of unforeseen consequences to men's actions, we have provided that where there are co-sureties, a release of one

of them by the creditor shall not discharge the others, nor free that one from responsibility to them.

"Adopting a provision of the French and Italian Codes, we propose that the surety shall be discharged by any act or omission of the creditor, only in case the eventual remedy of the surety against the principal is thereby impaired. We also propose to enact that where upon the face of an agreement two persons are primarily liable to a third person, that liability shall not be effected, so far as regards the third person, by an arrangement between the two, that one of them shall be liable only upon the default of the other, even although such arrangement may have been known to the third person, unless he was a party to the arrangement. In this we adhere to the old and simple doctrine of the common law, rejecting the qualifications introduced by courts of equity.

"In our rules on the subject of bailment we have discarded the complicated system of gradation which the English law applies to the amount of care which a bailee is to be expected to exercise, and the responsibility which is to attach to him; and we have framed our proposed law on the principle that in all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would take of his own goods, and that more should not be required of him in any case.

"We have endeavoured to improve the law applicable to the case where the bailor's goods have, without the consent of the bailor, been mixed up with the goods of the bailee, so that they cannot be separated. The remedy which our rule provides is, that the bailor shall be entitled to receive compensation for the loss of his goods, which seems more expedient than the provision of the English law, that the whole shall go indiscriminately to the person whose goods have been mixed without his consent.

"We have provided that a continuing guarrantee given by, to, or for a firm, shall not be rendered invalid by a change in the firm.

"In regulating the devolution of rights and liabilities, we propose, in accordance with the rule of English courts of equity, and of the Indian Code of Civil Procedure, that joint liabilities and rights shall, after the death of one of the persons liable or entitled, go to his representative jointly with the survivor, and, after the death of the survivor, to the representatives of both jointly.

"We propose to lay it down, that a person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it if he was in reality acting not as agent but on his own account.

"In defining the responsibility of a master for the misconduct of his servant, we have stopped a little short of the limits assigned to it by the English law. We think that the responsibility ought to cease as soon as the misconduct assumes the character of intentional wrong-doing.

"According to the English law, when there is any partnership property, the separate property of any partner must be employed first in the payment of his separate debts, and the surplus, if any, in the payment of the partnership debts; but when there is no partnership property the separate property of any partner must be applied equally to the payment of all the partnership and separate debts for which such partner is liable. It thus depends upon the existence or non-existence of partnership property, no matter how small in amount, which of the two rules is to govern the division of the separate property of the partners. We have thought it right so to frame the law that the rule first stated, which is more equitable, shall prevail whether there is any partnership property or not. The principle on which we proceed is that of having regard to the views of the creditors in giving the credit. In contracts with a firm, partnership property is primarily looked to; in dealings with a partner with which the firm has nothing to do, all that is looked to is his own sufficiency.

"Adopting a rule which is to be found in the German and the Italian commercial codes, we propose that every person introduced as a partner into a pre-existing firm, shall be subject to all the obligations incurred by the firm before he was introduced.

"We have adopted, with such verbal alterations as were necessary to bring them into harmony with the language of our rules, the provisions of a law lately passed by the Indian Legislature, Act XV. of 1866, for relieving those who participate in the profits of a partnership without being really partners, from becoming liable for the engagements of the firm."

It may be said of these proposed modifications of English law, that while all, or nearly all of them, have commended themselves to the approval of enlightened lawyers, not a few are being gradually carried out in England without the aid of the Legislature, through the direction given of late years to the current of judicial decision.

It has been stated that a certain number of sections contained in the Commissioners' draft, have been omitted from the present Bill. These sections, numbered from 51 to 59, will be found in the Appendix, together with the paragraph in the Commissioners' Report, which describes their character. They relate to the specific performance of contracts and to injunctions against breach of contract; and they would in effect necessitate the repeal of certain portions of the Code of Civil Procedure.

The existing law of India, on the subject of the specific performance of contracts, is given by section 192 of the Code of Civil Procedure. The law on the subject of injunctions against breach of contract, which to a very great extent discharge the office of decrees for specific performance, is contained in section 93 of the Code. The language of both sections is so wide as to embrace contracts of every description.

It

It cannot be said that the latitude thus given to specific performance and analogous remedies is without precedent. It is not known that in continential European countries there is any limit to the power of decreeing the specific performance of contracts, except the discretion of the Court. But the law of India on the subject is considerably wider than the Scottish law, which, again, is wider than the law of England. The law of specific performance in England is, in fact, the narrowest in the world, less probably owing to deliberate intention than to the reluctance of equity judges to put freely in motion the once cumbrous and costly machinery of the Court of Chancery.

There is no doubt that, from an English point of view, the Indian law of specific performance is too little restricted. But, on the other hand, owing to difficulties of procedure, and especially to those arising out of the system of appeal, there are large numbers of contracts to which this class of remedies cannot be effectually applied, and it is believed accordingly that decrees for specific performance and injunctions against breach of contract are comparatively rare in India.

Under these circumstances, when the time for the first revision of the Code of Civil Procedure approached, a number of sections were prepared and (with amendments and additions) were inserted in a draft revised code, having for their object to place the extraordinary civil remedies on what appeared to be a more satisfactory footing. On the one hand, the classes of contracts to which they were applicable were more strictly defined, and various provisions were inserted to prevent the remedies themselves from operating with undue harshness against defendants. On the other hand, the procedure was so simplified as to make the remedies, thus altered and limited, of considerably easier application.

The sections in question, together with the draft of a revised code of procedure, were submitted by the Secretary of State to the Indian Law Commissioners. The Commissioners, in dissenting from them, expressed an opinion that no law of specific performance of the kind proposed, however carefully guarded, would be safe from abuse in India.

The question thus raised by the Law Commissioners is doubtless one of much difficulty, as well of great importance. It may be argued, on the one hand, that there is no country in which damages afford practically so imperfect a redress for breach of contract as they do in India, and none in which the prospect of having to pay damages operates so slightly to compel the performance of agreements. It may be contended on the other side that, under the circumstances of the country and people, all facilities for applying any unusual compulsion are peculiarly liable to be abused.

The sections omitted from the present Bill were doubtless framed by the Commissioners, under the influence of the feeling just indicated. They, in effect, propose for India a law of specific performance of contract and of injunction against mediated breach of contract, which would be narrower than that of England, which again is narrower, as has been stated, than that of any known community.

It is now proposed to omit these sections on two grounds. The first is, that in the opinion of the Member of Council charged with this Bill; an opinion which apparently coincides with that entertained by the framers of the Code of Civil Procedure; the proper place for defining the extraordinary, as well as the ordinary, civil remedies applicable in suits on contract is a code of procedure, not a code of substantive law. Owing to the historical connection between law and procedure, there is often a close association in men's minds between the two, and sometimes there is practical difficulty in disentangling them. If, however, we could suppose that a code of substantive civil law and a code of civil procedure were being framed simultaneously, and that the framer of the codes had the power of placing the law of specific performance in either code, there cannot be much doubt that he would consider it as cognate to procedure rather than to substantive law.

The second reason for omission is of a less technical character. It appears very desirable to leave the new Substantive Law of Contract to its operation for some little time, before that question of remedies in cases of breach of contract which has been so long and so hotly disputed in India, is brought forward anew for discussion. It may be reasonably suspected that much of the disinclination which has been felt, to investing the plaintiff in suits on contract with more than a bare claim to pecuniary damages, has arisen from the feeling that the civil courts of the Mofussil, in the absence of definite and accessible rules for their guidance, have scarcely been in a position to determine with accuracy the proper legal relations of contracting parties, or to apply to contracts the proper tests of validity and invalidity. If, however, the Legislature adopts the present Bill, India will be in possession of a body of contract law which leaves nothing to be desired, in point of simplicity and comprehensiveness, in respect of the essential equity of its provisions, and in respect of the perspicuity with which those provisions are set forth. It is probable, and indeed certain, that the effect of the new law will be, after a while, to place all questions of contract, and of procedure in suits on contract, in a far clearer light. A distinct advantage will thus be gained by postponing the subject of specific performance, and other cognate remedies, until the Legislature again addresses itself to the revision of the Code of Civil Procedure; a revision which, after it had been proceeded with some way, has been deferred for the present under the instructions of Her Majesty's Government.

H. S. Maine.

Simla, 9 July 1867.

APPENDIX.

"We propose that the extraordinary remedy of an order for specific performance should be restricted to the case of engagements for the creation or transfer of any interest in immoveable property, or for the delivery of any specific article of moveable property. We have not, however, thought it right to include in the former category agreements to cultivate land in a particular manner or to grow particular crops; and we have provided that injunctions shall not be granted to restrain the breach of engagements relating to the cultivation of land or the growing of particular crops.

* * * * * * *

"51. Specific performance of a contract is the doing or the delivery of the thing contracted for, as the case may be, according to the terms of the contract.

"52. Where an engagement by contract has been made between any persons for the creation or transfer of any interest in immoveable property, or for the delivery of any specific article of moveable property, and the party who has entered into such engagement fails to perform it, the Court may, at the suit of any other party to the contract, order specific performance of the engagement, with or without compensation in respect of loss or damage caused by his default.

"*Explanation.*—An agreement to cultivate land in a particular manner, or to grow particular crops, does not create such an interest in immoveable property as is contemplated by this section.

Illustrations.

"(*a.*) A. agrees with B. to sell him a house for 1,000 rupees. B. is entitled to a decree directing A. to convey the house to him, he paying the purchase money.

"(*b.*) A. agrees with B. to give him a bill of lading of a certain cargo. B. is entitled to have the bill of lading signed by A.

"(*c.*) A. agrees with B. to prepare and sow, and cultivate a field with indigo, and to deliver him the crop; when the crop is cut and ready for delivery B. is entitled to have the crop delivered to him in specie, but he is not entitled to a decree directing A. to prepare, or sow, or cultivate.

"(*d.*) A. agrees with B. that he will paint a picture for him, and the picture is painted. B. is entitled to have it delivered to him, but B. is not entitled to a decree ordering A. to paint or to complete the painting of the picture.

"(*e.*) A. agrees with B. to edit a periodical work for the remuneration of 1,000 rupees per month. B. cannot enforce against A. the specific performance of this contract; and as the rights and obligations are mutual, A. cannot enforce against B. the specific performance of this contract.

"[*N. B.*—In this case either party can obtain compensation for the loss sustained by him, by the failure of the other to perform his engagement.]

"(*f.*) A. agrees with B. to deliver to him 40 chests of indigo, at 1,000 rupees per chest. A. fails to perform his engagement. B. cannot obtain specific performance of the contract, but can obtain compensation for the loss sustained by him by reason of A.'s failure to complete the contract.

"(*g.*) A. agrees with B. to sell him a house for 10,000 rupees, the price to be paid and possession given on the 1st of January 1865. A. fails to perform his engagement. B. brings his suit for specific performance which is decided in his favour on the 1st January 1866. The decree ought, besides ordering specific performance, to award to B. compensation for any loss or damage which he has sustained by A.'s refusal.

"53. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the engagement as can be performed, and award compensation in money for the deficiency. In such case neither party shall be entitled to compensation for loss or damage caused by the neglect or default of the other party to perform the engagement.

Illustration.

"A. agrees to sell B. a piece of land consisting of 100 biggahs. It turns out that 98 biggahs of the land belong to A., and the two remaining biggahs to a stranger, who refuses to part with them. A. may be directed at the suit of B. to convey to B. the 98 biggahs, and to make compensation to him for not conveying the two remaining biggahs; or B. may be directed at the suit of A. to pay to A. on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

"54. Where a party to a contract is unable to perform the whole of the engagement which he has entered into with another party, and the part which must be left unperformed forms a considerable portion of the whole; the party in default is not entitled to obtain a decree for specific performance, but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of the engagement as he can perform, provided that the party seeking specific performance relinquishes all claim to further performance, and all right to compensation, either for the efficiency or for the loss or damage sustained by him through the default of the other party.

Illustrations.

"(*a.*) A. agrees to sell to B. a piece of land consisting of 100 biggahs. It turns out that 50 biggahs of the land

land belongs to A., and the other 50 biggahs to a stranger, who refuses to part with them. A. cannot obtain a degree against B. for the specific performance of the contract; but if B. is willing to pay the price agreed upon, and to take the 50 biggahs which belong to A., waiving all right to compensation, either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a degree directing A. to convey those 50 biggahs to him on payment of the purchase money.

"(*b.*) A. agrees to sell to B. an estate with a house and garden for 1,00,000 rupees. It turns out that A. is unable to convey the garden. A. cannot obtain a decree against B. for the specific performance of the contract; but if B. is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A.'s neglect or default, B. is entitled to a decree, directing A. to convey the house to him on payment of the purchase money.

"55. Except in cases coming under one or other of the two last preceding sections, it is not competent for the Court to direct the specific performance of a part of an engagement by contract.

"56. It shall be competent to the Court to award compensation in cases where specific performance is sued for, and the Court does not think fit to order it.

"57. In every case the Court shall have power to give compensation in money in lieu of the specific performance of the contract, where it shall appear to the Court that specific performance would inflict damage or injury on one party to the contract without any corresponding benefit to the party seeking specific performance.

"58. Where the specific performance of an engagement is ordered, and it appears to the Court that such specific performance ought to be made by a party by executing a conveyance, or by endorsing a negotiable instrument, and the party ordered to execute or endorse such conveyance or negotiable instrument shall neglect or refuse so to do, any party interested in having the same executed or endorsed, may prepare a conveyance or endorsement of the instrument in accordance with the terms of the decree, and tender the same to the Court for execution upon the proper stamp (if any is required by law), and the signature thereof by the judge, shall have the same effect as the execution or endorsement thereof by the party ordered to execute.

"59. Where a contract contains an engagement, express or implied, by one party, that he will abstain from doing any act, the Court may at the suit of another party issue an injunction to restrain the breach of such engagement, provided such other party has not failed to perform his own engagement.

"*Exception.*—This section shall not apply to engagements relating to the cultivation of land or the growing particular crops.

Illustrations.

"(*a.*) A. agrees with B. that he will sing at B.'s theatre for a twelemonth. B. cannot have an order directing A. to sing, but he is entitled to have an order restraining A. from singing at any other place of entertainment.

"(*b.*) B. agrees with A. that he will serve him faithfully for twelvemonths as a clerk. A. is not entitled to an order directing B. to serve, but he is entitled to an order restraining B. from serving a rival house, or doing any other act to the injury of A. in his business.

"(*c.*) A. agrees with B. that in consideration of a sum of money to be paid to him by B. on a day fixed, he will not set up a certain business within a specified distance. B. makes default in payment of the money. A. cannot be restrained from carrying on business within the specified distance.

Whitley Stokes,
Assistant Secretary to the Government of India,
Home Department (Legislative).

NOTE by the Honourable Mr. *Maine*; dated 15th July 1867.

The Indian Contract Law, 1867.

THIS is the second chapter of the proposed Civil Code. Under ordinary circumstances, I should have asked the Governor General to direct its publication under the rule of the Legislative Council which permits Bills to be published before their submission to the Legislature. But this rule is so framed as not to apply when the Council is holding weekly sittings, however formal they may be, and accordingly, early publication being a matter of urgent moment, I am reduced to proposing that the Bill be introduced and referred to a Select Committee merely as a form, it being explained at the time that the object is only to get the Bill before the public, and that no Committee will actually sit until we reach Calcutta.

I have assigned in the statement of objects and reasons the grounds on which I have omitted certain sections of the Commissioners' draft. I venture to predict with some confidence that the Council will allow this to be done. Having committed myself, in conjunction with Sir H. Harington, and with the concurrence, and indeed at the instance of the last Governor General, to a very different view of the law of specific performance, I could not with honour propose such an enactment on the subject as appears to commend itself to the Commissioner. The submission of such an enactment, if at any time it receives the express approval of the Home Government or of the Government of India, may well be reserved for my successor, and the proper time for submitting it will be the period at which

the revision of the code of civil procedure is again taken up, the Secretary of State having postponed it for the present.

It is perhaps necessary to add, that nobody but the writer is responsible for the statement of objects and reasons. It is in the nature of a speech, and, in fact, is generally framed from the remarks made by the mover on obtaining leave to introduce a Bill.

It cannot, I think, be honestly denied that the omitted sections (which are printed in the Appendix) are, in truth, directed against indigo planting. I would call attention to the "Explanation" appended to section 52, and to "Illustration" (*c*), also to the "Explanation" added to section 59.

These exceptions, explanations, and illustrations (which, in fact, constitute rules) can only, in my judgment, be defended on the ground that there is some special practical object which may be attained through the exceptional provisions.

Now, there is no such special practical object to be attained. Whatever be the evils of indigo planting, they no longer arise from a complicated system of contracts. The planting which did depend on such contracts is virtually extinct, and its place has been taken in Tirhoot and elsewhere by a system which depends for its stringency on zemindaree influence, direct or indirect. This is a result, and far from a satisfactory result, which I from the first predicted when I saw that the course likely to be followed would consist in preventing the indigo planters from enforcing their contracts, without, at the same time, taking any steps to sift the equitable from the inequitable contracts, and to give facilities for enforcing the former.

Again, it is not a case of limiting or amending a procedure which is found to work oppressively. The rules of the code of civil procedure on the subject of specific performance of contract (that is, the *actual* performance of contract, as opposed to the payment of damages), and of injunctions against intended breach of contract, cannot easily be worked by anybody, and by an indigo planter not at all. The planter, when he sees the ryot preparing for another crop the ground which he has contracted to sow with indigo, must file a regular suit in the civil court before he can obtain a decree for specific performance, or an injunction. Both are appealable; and before the ultimate decision can be given, the crop has long since been reaped and sold, or consumed.

The effect, therefore, of attempting to make these sections law, would be to put a perfectly needless and useless affront on the European community. It is true that the section of even the indigo planters which is directly interested in the question is but a small one; still the old quarrels have left traces behind them, and the whole unofficial community would consider itself attacked, and the contest would be entered into without any sort of object.

It may be observed that, though the sections are directed against indigo planters and are intended to be favourable to the cultivating class, they would operate very disadvantageously for artisans and labourers for hire. The "Explanation" added to section 59 (of the Appendix) speaks for itself, but under "Illustrations" (*a*) and (*b*) added to the same section, any emigrant coolie or labourer for a term might be restrained by a perpetual injunction from serving anybody except his first employer, and thus might have to choose between cruelty and starvation.

I have thought it right to publish the sections in question, that the proposed law may have whatever advantage is given to it by the Commissioners' authority. But I am compelled to dissent from their proposal, and I do not disguise my own opinion that, when the rest of the new law (which has my highest admiration) has been sometime in operation, and when the improvement which has begun in our judicial service has proceeded some way, the civil courts of India ought to be empowered to decree more speedily and easily the actual performance of contracts (whether through the agency of specific performance properly so called, or through that of injunctions) instead of leaving the plaintiff to the barbarous and (in this country) illusory remedy of pecuniary damages. In this way, and in this way only, will the Government of India be relieved from the perpetually recurring cry for a penal contract law.

H. S. M.

NOTE by His Excellency the Governor General; dated 19th July 1867.

IT would afford me much pleasure could I concur in the Honourable Mr. Maine's views, and agree to omit certain sections of the Chapter on Contracts drawn up by the Commissioners in England, with the object of being introduced into the Council of India as the future law of contracts for this country.

I can quite understand and appreciate the circumstances under which Mr. Maine is unwilling to support these sections. But, with every deference to my honourable colleague's judgment, it strikes me that the proper course will be to introduce the Bill as it has been drafted by the Commissioners, and on its introduction into the Council, for Mr. Maine to state his objections to the particular clauses which he proposes to omit. Even did I object to these clauses on their merits, I should equally consider that I was bound to adopt this course.

I presume that the Legislative Council of India will consider and discuss on its merits each and all of the clauses of the Bill, and that every member will then be free to give them his support or not, as his judgment may dictate; though, as sections of a law so drafted, and which have received the support of the Secretary of State for India in Council, it will be desirable,

desirable, if possible, that they should receive the support of the different members of the Government of India.

I have always been opposed in principle to the specific performance clauses as drafted in the code of procedure, to which Mr. Maine refers, and when that code was originally drawn up, I explained my objections both to that gentleman and to Sir Henry Harington. It is true that the said clauses were then so fenced round by very stringent conditions, that they would probably in practice have been rendered null or nearly so. But the objection which I then saw to them, even in their modified form, was that, if they were once passed into law, and were subsequently found, as they assuredly would have been found, to be practically inoperative, the indigo planter could, and would probably, have come forward and have said, "the Legislature has admitted the principle that contracts for the supply of indigo plant are necessary and reasonable; it has admitted further, the necessity for specific performance of such contracts; now that the conditions which surround the provisions of the law for their enforcement have been found impracticable, modify these conditions and carry out the principle of law."

My belief is that any such law, if applied to contracts for the supply of indigo produce, from the very nature of the circumstances which pertain to such cultivation, must be liable to great abuse, which it would not be possible effectually to guard against; and therefore I am strongly opposed to any course of procedure which may indirectly lead to the enunciation of such a principle. When, therefore, a law of contracts is brought into the Legislative Council, I am glad to see clauses guarding against the application of specific performance to contracts for the delivery of indigo. Without this precaution, the clauses on specific performance, which remained in the law of contracts, might be construed to cover contracts also for the delivery of indigo.

I am not aware that such contracts are really extinct. They have doubtless become less common than formerly, as indigo cultivation has been largely reduced in parts of Bengal. In those districts in the neighbourhood of Calcutta, where the dispute between the planter and the ryot arose, and where the strife was most intense, viz., the districts of Kishnaghur, Jessore, Furreedpore, and Baraset, such contracts may have become virtually extinct. But there are large portions of Lower Bengal to which the strife of those days did not, for one cause or other, in such intensity extend, yet where indigo was largely cultivated, and where the justly deprecated contract system equally prevailed, viz., the eastern portion of Bengal, Dacca, Tipperah, and Mymensingh, and the districts bordering on the Ganges, Maldah, Rajshaye, and Moorshedabad. I believe it will be found on inquiry that the contract system which formerly prevailed does still in those parts generally prevail.

Nor am I satisfied that the system of indigo planting which prevails in Tirhoot is free from the taint of inequitable contract. The Tirhoot system has been long in force in Behar, but it has not, I believe, been introduced generally into Bengal. Moreover, the two systems, the Bengal and the Behar, are not practically very dissimilar. In Behar (*i.e.*, in Tirhoot, Chumparun, Sarun, &c.), as in Bengal, the first essential for the planter was to buy the influence of the zemindar. But in the former Province it has been the settled policy of the planter really to conciliate and carry along with him the native landlord, and so to have less difficulty with the ryot; in Bengal, the price once paid to the native landlord, the planter cared not further to conciliate him; and the result frequently was secret hostility towards the planter and secret assistance to the ryot in resisting him.

Add to this a feature favourable to the ryot in Behar, by which, in a season of adversity, the loss was shared by the planter, and not, as in Bengal, borne entirely by the ryot, and the fact that the ryot in Behar was less worried by unscrupulous subordinates of the planter, and the main differences have been stated. In the one system, as in the other, the planter was all powerful—the ryot all in his power. In the one case, as in the other, the ryot was not a free agent, and did not cultivate indigo from choice. The contract under such circumstances, whether it were to deliver produce or to sow a certain quantity of land, was not voluntary, and could not be equitable. In neither case is it easy to conceive that a contract between persons so situated and with interests so opposed can be purely voluntary and equitable, such as to justify a law enforcing specific performance. The remedy for such a state of things is to be found not, I think, in exceptional legislation, but in the simple process on the part of the employer of providing proper remuneration to the employed.

If the planter will pay adequately for the cultivation of indigo, he will get the ryots to grow and deliver it. It is the circumstance that he is unwilling to do so that necessitates his driving the ryot into contracts, which the latter uses all his cunning to evade.

I cannot admit that it can fairly be considered that the retention of the clauses which have been drafted by the Commissioners, and which Mr. Maine proposes now to omit, would be to put an affront on the European community. What we do in this case, we do because it has been proved by experience that such precautions are necessary to guard a particular class from oppression to which they are from circumstances especially exposed.

Nor can I apprehend any danger to artisans or labourers under Section 59 and its "Illustrations." No one, I should say, would think of applying them to such persons. But if there really is any danger of such a misapplication, I would suggest that an additional "Illustration" be added to the section.

J. L.

NOTE by the Honourable Major General Sir *H. M. Durand*, C.B., K.C.S.I.;—dated 22nd July 1867.

THIS is a question I cannot summarily dispose of with an off-hand opinion. It involves the consideration of some difficult points, and even of a conflict of legal principles.

I should suggest that the Bill be printed without casting out the clauses to which Mr. Maine objects into an Appendix. I would print the Bill without omissions, but the clauses to which Mr. Maine raises exceptions might be printed in a different type, so as to indicate clearly and at a glance, but in connection with what precedes and what follows, the parts of the Bill to which Mr. Maine's Statement of Reasons refers. It would not weaken Mr. Maine's position, for it would, supposing his view be correct, show the contrast between the clauses alleged to be drawn in adverse intention to the indigo planters, and those not exceptional, but based on the general principles to which Mr. Maine gives his support.

Both Mr. Maine's note and that of the Governor General might, with advantage, be circulated in print.

H. M. D.

NOTE by the Honourable Sir *George Yule*, C.B., K.C.S.I.; dated 23rd July 1867.

I THINK Sir H. Durand's proposal preferable to putting the Specific Performance Sections into an appendix; preferable even, it seems to me, from Mr. Maine's point of view in regard to the sections in question; but still, under the peculiar circumstances of the case, I would leave the decision on the procedure to be adopted entirely to Mr. Maine himself. We are not required to express an opinion on any other point at present.

G. U. Y.

NOTE by the Honourable Mr. *Maine*; dated 23rd July 1867.

THESE papers have again come to me, possibly through accident, but I think that a few more words from me may save from some misapprehension those Members of Council who have not yet seen them.

His Excellency the Viceroy appears to me to be under the impression that there is some law of Specific Performance in India which may be used to enforce an indigo contract. There is no such law. The provision in the Code of Civil Procedure that the forms of a regular suit must be gone through before a decree for specific performance or an injunction can be obtained, is an absolute bar to its being employed in indigo matters.

If the Commissioners' sections become law, they will in no respect alter the existing procedure. They will only throw it into a form singularly obnoxious to the European community, through the special exception of indigo contracts from the operation of principles elsewhere recognised.

My contention is that the sections are in their wrong place. A civil code of contract embodies the answer to the question, "What is a contract?" A code of procedure in contract contains the reply to the question, "In what mode shall a contract be enforced?" My opinion is clear as to the code in which the rules of specific performance ought to be set forth.

I have accordingly proposed to postpone the question of specific performance until the proper moment for discussing it arrives; the period, namely, when the Secretary of State gives leave to the Legislature to undertake the revision of the code of civil procedure. I do not wish to discuss either the sections of the Commissioners or those prepared by Sir H. Harington and myself; first, because it is the wrong time for such a discussion; and, next, because, if either one or the other set of rules were carried now, they would assuredly have to be repealed when the code of procedure was revised.

I submit, at the same time, that I have paid all due deference to the authority of the Commissioners. I have printed their sections in an Appendix, and they will have as much publicity, and will be as widely circulated, as the Bill itself. If any Member of the Select Committee or Council thinks fit to move them by way of amendment, they are ready to his hand. This course seems to me infinitely preferable to placing me in the not very creditable position of having to oppose my own Bill.

I frankly admit that I hope the good sense of each and every member of the Legislature will lead him to refrain from moving such an amendment. In the discussion which will come, things will almost infallibly be said which will be offensive to the European community on one side, and to the Law Commissioners on the other. Attention will be diverted from the important parts of the Bill to its least important provisions. A prejudice will be created against what is really a most beneficial measure. And, when all is done, it will come practically to the same thing, whether the sections are carried, or whether they are not carried.

I am sorry that some remarks of mine have given occasion to his Excellency to enter on the question of substance. Whether indigo contracts are or are not extinct, whether they

are

ar always fair or always unfair, may be matters on which there is room for legitimate doubt, but which there is not the smallest practical use in discussing now.

Let me add that his Excellency is mistaken in supposing that the Secretary of State has especially approved of these sections. He has merely requested that a "measure founded on the Commissioners' draft" may be submitted to the Legislature. As Lord Cranborne, in replying to a question about my own sections (intended, be it remembered, for a code of procedure), stated in Parliament that the planters had grievances which ought to be remedied, he can scarcely approve of sections which would practically have the effect of excluding the planters from civil remedies.

H. S. M.

NOTE by the Right Honourable Mr. *Massey*; dated 23rd July 1867.

THE simple question at present is, whether Mr. Maine shall be allowed to print the Bill in the form in which he proposes to introduce it?

I have no hesitation in saying he is entitled to do so, and that the Council could not attempt to subject him to any coercion in the matter.

I give no opinion at present as to the clauses which he proposes to omit. The whole policy of the measure will be discussed before the Bill is debated in the Legislative Council, and if we cannot agree in the Executive Council, Mr. Maine will probably not object to its being an open question.

W. N. M.

NOTE by the Honourable Mr. *Maine*; dated 25th July 1867.

AFTER reconsidering the subject discussed in Council yesterday, I have to say that I am willing to change the form of the Bill which embodies the "Indian Contract Law." I do this, partly out of deference to the strong feeling which appears to be entertained by his Excellency the Viceroy, partly because I do not wish to deprive the country any longer of the great boon which will be conferred on it by the mere publication of those parts of the Bill which define and describe contracts; and partly because, while I feel strongly the falsity of the position involved in moving the reference to a Select Committee of a Bill of which I in some measure disapprove, yet I think that almost any anomaly, confined to India, is better than that this Government should formally refer to the Secretary of State the question whether the legal member of Council is bound to move the adoption of certain provisions, from which not only does he dissent, but his dissent from which is so notorious that questions respecting his views have been asked in Parliament.

I am willing, therefore, to transfer the specific performance sections from their present position in the Appendix to the end of the Bill, in which they will be included; and I propose, after the discussion of these sections in the Statement of Objects and Reasons, to add some such passage as the following:—

These sections are retained in the Bill out of deference to Her Majesty's Commissioners; but it is the intention of the Member of Council charged with the Bill to move their omission in the Select Committee, or, if necessary, in the Council, principally for the following reasons."

Then will follow the last two paragraphs of the statement in their present form.

But while I state my willingness to take this course, I must again take the liberty of expressing my doubts whether it is expedient, and not only whether it is expedient, but whether it is not especially inexpedient from the point of view of the Viceroy and of those who agree with him.

1. It renders an irritating discussion inevitable. If the omitted sections are replaced in the Bill, it is due, not simply to myself and my opinions, but to the character of Sir H. Harington, that I should attempt to get them out. On the other hand, if they are left in the Appendix, the chances seem to me to be that the good sense of all will prevent their being moved by way of amendment. The consequence will be that, though there may be a little discussion by the Press when the Bill is first published, the whole subject of specific performance will be postponed, as his Excellency would apparently wish, till long after the Viceroy and I have left the country, and will probably be re-discussed amid a totally new set of ideas on the subject of contract produced by the present Bill, and possibly in a totally different set of relations between planter and ryot. Meantime, so long as the code of civil procedure is unrevised, the law does not admit of the specific performance of a contract to cultivate a particular crop, or in a particular manner.

2. The result which I understood the Viceroy to deprecate strongly in Council, namely, that his Excellency himself or somebody who agrees with him, should have to move these sections by way of amendment, is very likely to occur, even though they are placed at first in the body of the Bill. It follows, of course, from what I have said, that I consent to move the reference of the Bill to a Select Committee, although, strictly speaking, such a motion, according to our procedure, implies approval of all important parts of the measure. But in Committee I must move the omission of the sections, and I may possibly succeed.

In that case, the Bill submitted to Council at what may be called the third reading will not be the Bill in its original form, but the Bill as amended by the Select Committee. Consequently, anybody who, contrary to the recommendation of the Select Committee, wishes to replace the omitted sections, will have to move them by way of amendment.

3. I submit that, in insisting on the inclusion of these sections, the Viceroy, or anybody who agrees with him, abandons a strong position for a weak one. The Report of the Indigo Commission is now seven years old, and whether or not his Excellency is right in denying that the old indigo contracts are extinct, there can be no reasonable doubt that they have been widely and considerably modified. Still I freely admit that when anybody attempts to amend the present code of civil procedure, which does not admit of the specific performance of any kind of cultivating contract, the conclusions of the Indigo Report present a formidable and perhaps insuperable obstacle to his success, if the effect of the amendment will be to give an advantage, however slight and incidental, to the planter. But, on the other hand, I submit that there is not sufficient evidence to go upon, if the offensive is taken, and if one places oneself under the obligation of showing that indigo contracts should be excepted *eo nomine* (as is virtually done by the Commissioners) from a class of enforceable contracts to which they would otherwise belong, and to which they would belong even under the narrow English law. Direct, distinct, affirmative evidence, bearing on the state of things now existing, is required in such a case, not inferences from the Indigo Report or suspicions derived from the relative characters of European and Native. I only state the results of my own experience when I say that, so long as the planter is denied the help of the civil law in enforcing his contracts through a general provision of the procedure code, evidently not framed with any special reference to his position, it is all but impossible to make any change which assists him, however incidentally, in the face of the doubts suggested by the Indigo Report. But it becomes a very different matter when the positions are reversed, and when the opponent of the planter proposes a new law of specific performance, and denies the benefit of it to his contracts with the ryot, not on the score of proved want of equity in particular contracts, but on the *à priori* assumption that all such contracts are from the nature of the case unjust.

As I have said, however, rather than make a reference to the Home Government, I will adopt the course which I do not think the best.

H. S. M.

NOTE by His Excellency the Governor General; dated 25th July 1867.

(With remarks by the Honourable Mr. *Maine*, dated 26th July 1867.).

ON again looking over the printed copy of the amended draft for the Contract Law, I find that *all* the Specific Performance Clauses have been omitted, as stated yesterday by Mr. Maine in Council. One of my objections, therefore, to comply with his wishes, of course falls to the ground. But I am myself still in favour of retaining all these clauses in the proposed Contract Law, as prepared by the Commissioners. The objection advanced by Mr. Maine to their forming part of the substantive law, appears to me to be quite a technical one, which ought not to have much weight with us. And if his authority on such a subject is justly entitled to much consideration, so is that of the Commissioners also.

The real objection of my honourable friend is to the exceptions of the Commissioners to the rules laid down in these clauses. Now it certainly appears to me that the weight of authority is in favour of these exceptions. The Report of the Commission on the question of indigo cultivation in Bengal, in Lord Canning's time, proved, in my mind, most completely, what was long before that period pretty notorious, that contracts for the delivery of indigo produce were not really voluntary ones, but forced on the ryot as a rule by the planters. While I see no objection to Specific Performance Clauses in a Contract Law for India as a general rule, I consider that exceptions, such as the Commissioners have made, are just and reasonable, and such as circumstances demand in India.

If Mr. Maine cannot bring himself to introduce the law in the complete form in which it has been received from England, it becomes a question whether some other Member of Council would not undertake the duty.

J. L.

On this Note of his Excellency I have to remark that my objections to the Commissioners' sections are threefold. I consider,

1. That the sections are out of place;
2. That they needlessly raise an irritating political question;
3. That both the rules *and* the exceptions are thoroughly unsuited to India.

This last is an objection of substance, which I have kept back, trusting to the first two.

H. S. M.

NOTE

NOTE by the Honourable Mr. *Maine*, dated 27th July 1867.

I AM extremely sorry to have to ask the Viceroy and my honourable colleagues to read anything more from me on the subject of the "Indian Contract Law;" but I perceive from a second Note by his Excellency, which has been in circulation, that the discussion next Wednesday will be incomplete, unless I touch on a side of the question before us, which I have hitherto scrupulously avoided—its merits. I have hitherto confined myself to reasons for omitting the Commissioners' sections which are not reasons of substance. These are—

1. That the sections will embark us in an irritating controversy;

2. That they will do so needlessly, since they will effect no practical change in the existing law;

3. That they will do so prematurely, since the revision of the Code of Civil Procedure will furnish a much better occasion for discussing the subject of Specific Performance;

4. That they are out of place.

On my former Notes, however, the Viceroy has made the remark that apparently I do not object to the Commissioners' rules of Specific Performance and Injunction, but only to the exception of indigo contracts. It is thus evident to me that, by trusting to the objections just enumerated, I have placed myself at a disadvantage. The truth is, I object to the rules as much as, or even more than, I do to the exceptions.

The grounds on which I quarrel with the rules are much wider than those on which I quarrel with the exceptions. My opinion is that the greatest evil connected with the civil procedure of India, is one quite apart from indigo contracts. It is the system of *un*executed decrees for money or pecuniary damages. Until my own proposals fell into abeyance, I was collecting evidence on the point, and had collected a great deal. It was all one way. It showed that such decrees are rarely, indeed almost never, executed in India against small debtors in the way required by the theory of the law. This is, perhaps, inevitable in a country in which the debtor has so little "visible" moveable property, and in which his land depends so much for its value upon his labour, and, indeed, if it consist in a right of occupancy, cannot be taken in execution. The result is that these decrees are *hoarded*. They are divided, bequeathed, inherited, and sold in open market. Probably there is nothing which more astonishes an English judge fresh from home. Finally, these decrees get into the hands of some neighbour of the debtor, richer than himself, probably the village money-lender. By him they are so used as to become an instrument of monstrous oppression. They are enforced by a little at a time, or bonds, bearing enormous interest, are taken for forbearance, or they are retained as means of exercising power. Meanwhile there is no insolvent law in the Mofussil by which the debtor can release himself.

The rules of specific performance and injunction framed by me with Sir H. Harington's assistance would have tended to cure this great evil, which probably affects thousands, where the indigo contracts affect scores. Under these rules, the civil courts would have ordered the defendant to perform his engagements or restrained him from breaking them, instead of waiting till he had committed a breach of contract, and then handing him over to the plaintiff. It appears to me that in this way only can Indian Courts discharge the duty imposed on them by the theory of the law. At present they seem to me to act pretty much after the fashion of certain tribunals which have no very savoury historical reputation. They condemn the defendant, and then turn him over to somebody else to be tortured.

The sections in question proceed on the assumption (which is made by every civilized body of law in the world, except the English), that a wide and liberal law of specific performance is to be preferred to a narrow law. But they are fenced round with restrictions which would effectually prevent their being applied in any case in which the extraordinary civil remedies of specific performance and injunction would cause injustice or hardship, as compared with the ordinary civil remedy of damages.

The draft revised Code of Civil Procedure is put up. The specific performance sections are 24, 25, 133, 134, Sections 314 to 317 (both inclusive), and Section 328. The rules concerning injunctions correspond.

I would further call attention to Section 62 of the Code of Criminal Procedure (also put up). It is, I believe, the provision of the code on which magistrates most rely for good administration and the prevention of crime and disorder, and it embodies a true *criminal* law of specific performance and injunction, now in force in India.

I also take the liberty of appealing to certain remarks of mine made in the Legislative Council when I transferred the charge of my sections to Sir H. Harington. They are contained in the volume of Legislative Proceedings put up. My argument is much weaker than it would be if the present Bill became law, for almost any court will now be able to apply the proper tests of validity and invalidity to contracts.

I fully admit that my sections would have applied to indigo contracts, unless such contracts were excluded by the limitations embodied in the law. I also admit that, but for the planters' agitation, it is very likely that the grave defects in Indian civil procedure to which I have adverted, might have escaped notice; but this is only an illustration of a phenomenon many times seen. The European community has rarely been disinterested in its agitations;

but its grievances have constantly opened its eyes, and ultimately those of the Government to many real and grave defects in our laws and administration.

I assert, however, that if an indigo contract satisfied the conditions of those sections, and if, further, it satisfied the tests of valid contract set forth in the new Bill, and known for centuries to lawyers, on every principle of justice it ought to be enforced by the civil courts.

My own opinion is that, if my sections had become law, they would have revolutionized the relations of planter and ryot. The practice of hoarding money-decrees and holding them over the ryot *in terrorem*, was one of the greatest evils of the indigo system. That would have come to an end. My sections further denied the benefit of their procedure to contracts for more than five years, a provision which would have put an end to those long contracts under which the ryot was almost enslaved, and I would have consented to shorten the duration of the contracts, if necessary. Further, a contract, in order to come under the new law, had to be registered under the Registration Act, so that the personation imputed justly or unjustly to the planters would have been rendered impossible, and the actual assent of the ryot would have been established.

Under such a system it is all but certain that the whole of the existing indigo contracts would have been abandoned, and all contracts would have assumed a new form. And, after all the securities required by my sections had been provided in the initiation of the contract, the planter, if the present Bill became law, would be compelled to satisfy the Court of the inherent equity of his contract before he obtained his remedy—a remedy which, I may observe, would, in the great majority of cases, have been, not a decree for specific performance in the strict sense of the words, but an injunction against meditated breach of contract, since a complicated contract to cultivate in a particular way is not "certain" within the meaning of my sections.

This attempt; not, I venture to think, quite unworthy of the importance and difficulty of the subject, has now miscarried. The Secretary of State has vetoed it, and the Law Commissioners now propose that the planters shall be outlawed so far as the civil law is concerned. The expedients by which a Native enforces a money-decree against a small debtor are, of course, impracticable to a European. The Viceroy anticipates that, in the absence of legal power of constraint, the planters will make fair contracts. If I know anything of human nature, I predict the exactly opposite result. I think they will become careless of the equity of their contracts, and will trust to zemindaree influence, and to other less legal, though not less oppressive, methods to enforce them.

The Viceroy has observed in the same note, that my objection to the misplacement of the sections in a Civil Code is only "technical." If the observation is made in disparagement, I do not accept it. Scientific faults are of great importance in our codes, which are destined, I am sure, to exercise great influence on English jurisprudence, an influence which the proposed arrangement would be likely to impair.

I do not wish by this note to provoke a paper controversy, but merely to ensure the completeness of our next discussion, and to guard myself against being supposed to make a concession which I never intended to make. Nor do I desire to recall the offer which I made to include the omitted sections in the Bill, provided I may expressly reserve to myself power to oppose them afterwards.

H. S. M.

NOTE by His Excellency the Commander in Chief, dated 27 July 1867.

[With a Remark by Sir *H. Durand*, dated 29 July 1867.]

IT appears to me that the important questions which are involved in the matter of the discussion between his Excellency the Viceroy and the Honourable Mr. Maine should be specified, and votes taken separately on them.

1st. Is it competent for even a majority of the Council to dictate to a Member how he is to frame a Bill, provided that he generally adheres to the spirit of the instructions the Government has received from the Secretary of State?

2nd. The principle of our future discussions having been affirmed by a vote on Question 1, does the course proposed by Mr. Maine sufficiently meet the views of the Secretary of State in a matter of such moment as the framing of a chapter of a code of substantive law; this question being viewed according to the precedents with which the Council is acquainted?

3rd. Is the reasoning of Mr. Maine sufficient for the support of his views, on what has been called the technical ground, though much more than technicality is involved in it, viz., that it is a solecism to include rules of procedure in a code of substantive law?

4th. Is Mr. Maine right or wrong in his proposition that the course proposed by the Viceroy will not alter the law as apparently wished by his Excellency, while it will suggest class-agitation and irritate the indigo planters?

5th. Is it politic to introduce into the Indian Contract Law of 1867 the contested clauses, if Mr. Maine's proposition as contained in Question 4 be correct.

I venture to suggest that it will facilitate our deliberations if the Council come to a distinct understanding on the foregoing points, it being, I believe, impossible for us to extricate ourselves from the dilemma in which we are involved without defining the issues in some such manner as is here proposed.

It

It seems to me that the Council has been sufficiently informed for this purpose by the several notes of the Viceroy and Mr. Maine, and the discussion of last Wednesday.

I would beg that this note may be circulated before the next meeting of Council.

W. R. M.

In a Note circulated before this paper reached me, I have stated what appears to me the main point to be considered and discussed before entering on the question, whether the principle involved should be in contract law or the civil procedure.

H. M. D.

Note by the Honourable Major General Sir *H. Durand*, C.B., K.C.S.I.; dated 29th July 1867.

I do not fully appreciate the technical objection raised by Mr. Maine to the insertion of the sections having reference to specific performance; they seem to follow naturally enough as a branch of performance of contract; and considering that independently of indigo contracts, there are many other kinds of agreements in which specific performance may have to be adjudicated, the Law Commissioners might have exposed themselves to criticism had they passed over this peculiar form of performance of contract without laying down any guiding principles in the Indian Contract Law. We are told that "in some cases where "compensation in damages is manifestly insufficient, the Court of Equity, and in some "cases, the Common Law Courts also, will compel specific performance, as for example in "case of agreements for the formation of a partnership, or for the sale of the good-will of a "trade, and of contracts to insure against loss of fire." Having to combine the principles which in England govern the Common Law Courts and Chancery, the Law Commissioners could hardly with propriety avoid touching distinctly on a branch of contract law which had a special bearing on a large and not unimportant class of cases that may and do occur at our centres of commerce. But more especially was this necessary when they had to lay down so vital a principle as that one large class of cases, which might otherwise be comprised by the general principles affecting specific performance, were to be excluded from this remedy. As a principle, it touches to the quick the interests of the ryots employed in the cultivation of indigo, opium, cotton, sugar, &c.; and at the same time it nervously affects the interests of capitalists, European or Native, who trade with the agricultural community for these valuable products, in a way more or less serious, according to the nature of agreements which it is the custom to make in particular districts. From this point of view, I can hardly conceive a more momentous legal principle than the exclusion of agreements to cultivate land in a particular manner, or to grow particular crops, and it is one that, if deliberately adopted, merited a distinct section for its prominent and formal enunciation. It is scarcely done credit by insertion as an explanation to section 52.

The main point at issue really is, whether the Government of India is prepared deliberately to accept the exclusion of this class of engagements from the judicial remedy of decrees for specific performance or of injunction against meditated breach of contract. This lies at the root of the difference of opinion between his Excellency the Governor General and the Honourable Mr. Maine; and whether the contract law code or the revised civil procedure code be the proper place for the sections on specific performance, seems a point of minor moment easily enough disposed of, when once the main question at issue is faced and decided. It is a question which should be first formally considered and discussed before embodying a vital principle in either code.

H. M. D.

Note by the Honourable *H. S. Maine*; dated 14th August 1867.

His Excellency the Governor General, while expressing himself sensible of my offer to defer to his views by including the omitted sections in the Bill, subject to a right reserved on my part to move their omission at a later stage, has intimated in Council that he does not consider such a course would be expedient. It has therefore been decided that the discussion on the sections shall be communicated to the Secretary of State.

The misfortune of differing from the Indian Law Commissioners on a point of law and from the Governor General on a point of policy, does not often happen to me. But as my opinion is strong, and as my position, owing to passages in the past history of the question, is somewhat peculiar, I have thought it right to maintain my position.

The question as to the proper place of the sections is, I may observe, raised in a singularly distinct form. The case is not like that of those rules of procedure which were sent to us by the Commissioners with their chapter on succession. At that time there was not in India any procedure to regulate probate and administration, and consequently, if the new

rules of succession were to be worked at all, it was necessary to supply a new procedure. But now we *have* a law of specific performance in India and of injunction against breach of contract, and this law is contained in the existing code of civil procedure. The point is therefore distinctly raised whether this law shall or shall not be removed from the code of civil procedure, and transferred to the code of substantive civil law.

I do not for a moment deny that something is to be said for including specific performance and cognate topics in the province of procedure. I have admitted in the statement of objects and reasons appended to my Bill (which I beg may be considered as incorporated with these notes) that there is between law and procedure a debateable land. Nor do I doubt that many more reasons for the course taken in the Commissioners' draft have suggested themselves to the Commissioners than have occurred to me. At the same time, I hesitate to place among the reasons which have determined the Commissioners, those which appear to be urged in the last note of Sir H. Durand, which, by some accident, I have only just seen. If I rightly understand my honourable and gallant colleague, his argument is, that the Commissioners were justified in including specific performance and injunction in their draft because those subjects have great importance in connection with contract. The fact is undeniable; and unquestionably this very impression, that whatever is incidentally important in connection with a particular branch of law may legitimately be dealt with as part of it, is one which is shared by large numbers of English writers on law. These writers almost systematically confound the boundaries between law and procedure, and hence it is that the most comprehensive treatise on the English common law is nominally a work on "Nisi Prius," that books on the "principles of equity" run off into discussions on the practice of the Court of Chancery, and that exhaustive discussions of those principles are found in treatises on "Equity Pleading" and on "Decrees." But nobody who has bestowed much thought on the matter can doubt that the impression I have referred to, is, in fact, the great cause of the confused arrangement of all English law-books, and, if not most carefully guarded against, it will introduce confusion wholesale into our codes.

If there were no question at issue except that of arrangement, it would be easy to give practical effect to the Commissioners' conclusions. When the various Acts which will have been founded on their drafts are finally combined in a code consisting of numbered chapters, there will have to be a revision of the provisions of those Acts with a view to the severance of law from procedure; and my own impression is, that not a few rules and sets of rules, besides those under discussion, will have to be removed to the procedure code. It would have been possible therefore to include the sections before us in the code, subject to an express understanding that the question of place should be re-considered at the final revision. Or again, since the Secretary of State, in postponing the revision of the procedure code, has permitted that urgent amendments of it be embodied in separate measures, the sections before us might have been submitted to the legislature in a separate Bill, as an avowed anticipation of a revised code of civil procedure.

But, unfortunately, I differ further from the Commissioners in the question of substance, whether their sections constitute a good and fitting law for India on the subjects to which they refer. The grounds of my opinion, which are set forth fully in the preceding note, need not be repeated.

My difference from the Governor General is on a point of immediate policy. His Excellency, as far at least as regards the exceptions to the Commissioners' rules, has frankly accepted the view which nine men out of every ten in India would take—that these exceptions are directed against indigo contracts as a class. I do not myself doubt that the general opinion would go even beyond this, and would hold that the rules were framed with the same object as the exceptions, and were, in truth, narrowed and pared down in order to suit their measure. His Excellency is not afraid of such a construction, and would attach a special value to the exceptions, if not to rules, as a permanent protest against the indigo system, seconded by the authority of the Law Commissioners. I will not repeat the reasons I have before urged against the expediency of such a protest, but I may be permitted to express my doubts of its permanence. The present code of civil procedure is commonly cited as Act VIII. of 1859, that is, it was passed eight years ago. But that code, also founded on a draft of the Commissioners, contains a law of specific performance and injunction quite different in principle from that now proposed. What ground is there for supposing that the new law would last longer than the old? The very attacks to which it would from the first be exposed, surely promise it a much smaller longevity.

It is desirable that I should repeat my conviction that no direction to submit these sections to the legislature has been given by the Secretary of State. Theoretically, I admit that such a direction might be given, but it would be a strong measure to dictate the detail of a Bill, and an extreme measure to impose it, in effect, on a member of Council committed to a different mode of legislation. I have seen during my term of office, many requests from the Secretary of State for legislation in a particular sense, but these have always been couched in the most general language. I remember that the direction to submit to the legislature a most important measure, the abolition of the grand jury, was conveyed in a few lines.

I will only add my hope, that nothing I have written may be interpreted as implying that I do not think that the indigo system should be carefully watched. Indeed, one of my principal reasons for objecting to the Commissioners' proposal is, that its tendency is to leave that system entirely to itself.

H. S. M.

NOTE by His Excellency the Governor General; dated 16th August 1867.

I HAVE no wish to add to the notes which have already passed on this subject.

It has been fully discussed in Council, and it seems to me that the feeling of my colleagues is, that the present is not an opportune occasion for discussing the question of indigo contracts.

I have therefore consented to the course originally proposed by the Honourable Mr. Maine, viz., that the clauses as to specific performance proposed by the Law Commissioners, and by which the question as to indigo contracts would have been raised, should be omitted from the Bill.

I think it right, however, before the discussion finally closes, to disclaim all attempt to desire to dictate to my honourable colleague, Mr. Maine, any course to which he is conscientiously opposed. Nothing has ever been further from my intention than to do so.

But I considered it right to bring the question before the Council, because I think the indigo system in Bengal calls for examination, and, if necessary, for interference, and I thought that the Bill, as drafted by the Commissioners, distinctly directed attention to it.

Without discussing the legal points raised by the Honourable Mr. Maine, I still think that the opinion of the Law Commissioners is also entitled to deference, and justified me in wishing to use the opportunity thus afforded.

Moreover, beyond doubt, indigo cultivation is founded on a peculiar system of contracts, the discussion of which seemed to me naturally to be raised by the preparation of a new general law of contract.

However, as I have already said, I think it due to the feeling expressed by my colleagues, to defer to their wishes, and to await another opportunity of considering this question, and I do this the rather that I believe that it is likely to be more satisfactorily examined, if its merits are not complicated with any accidental circumstances, such as those which have arisen on the present occasion.

At the same time, I think it my duty to say that I fear that the day is not far distant when we shall be compelled to examine the entire indigo system, and I feel assured that the difficulties attending such examination will not grow less, but rather greater, by delay.

J. L.

— No. 5. —

Indian Law Commissioners to the Assistant Under Secretary of State for India.

Sir, 20, Abingdon-street, 18 December 1867.

IN reply to your letter of the 28th ultimo, transmitting, by direction of Sir Stafford Northcote, for the purpose of being placed before Her Majesty's Commissioners appointed to prepare a body of substantive law for India, a copy of a Despatch from the Government of India, with a draft Bill on the subject of contract, and other papers, and stating that Sir S. Northcote would be glad to receive any observations which the Commissioners might desire to make on the subject, I am directed by the Commissioners to transmit to you their 4th Report, in which are contained their observations on the subject referred to them.

J. C. Melvill, Esq., India Office. (signed) *W. Macpherson.*

FOURTH REPORT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed for the purpose of preparing for India a body of substantive law, and of considering and reporting on such other matters in relation to the reform of the laws of India as might be referred to us by Your Majesty's Secretary of State for India, have received from Your Majesty's Secretary of State for India a communication dated the 28th November last, referring to us a Despatch from the Government of India, with a copy of a draft Bill, on the subject of contracts, identical with the measure prepared by us, and submitted in our Second Report, except that Sections 51 to 59, relating to the specific performance of contracts, are omitted; and also, as setting forth the

grounds on which this omission is founded, the statement of "Objects and Reasons," and the "Notes" recorded by the Governor General and the members of his Council on the subject.

We find that in the papers referred to us two questions are discussed with respect to the omitted sections:

First, whether the subject of them, namely, the enforcement of the specific performance of contracts, properly belongs to Substantive Law or to the Law of Procedure.

Secondly, whether the law proposed in those sections is fit to be enacted.

Upon the first question, we entertain no doubt that the proper place for the clauses relating to the specific performance of contracts is in the Code of Substantive Law and not in the Code of Procedure.

To enforce the specific performance of some contracts is impossible; of others, is inexpedient. It is the province of the Code of Substantive Law to define the rights and liabilities of parties arising out of their contracts, and in so doing to specify what contracts may and what shall not be specifically enforced. This is no part of procedure. The proper province of procedure is to point out the mode by which effect is to be given to rights already defined, and not itself to define those rights.

In like manner the Penal Code, which is Substantive Law, defines and classifies offences and assigns the appropriate punishments, but leaves the rest to the Code of Criminal Procedure.

The defining and classifying the contracts to which the enforcement of specific performance is an incident, is a branch of Substantive Law, exactly as the defining and classifying of offences to which capital punishment applies is also a branch of it.

Accordingly the New York Code puts specific performance in the Code of Substantive Law and not in the Code of Procedure. So also in Mr. Austin's work, and in Mr. Justice Story's Treatise on Jurisprudence, specific performance is treated as a part of Substantive Law, not of Procedure.

To proceed to the second question. We see no reason to think that the omitted sections are either wrong in principle or inexpedient, or that there is anything in them which ought to be struck out or to be altered.

What is alleged against them as a fault is in effect that under them specific performance cannot, in cases of contracts for cultivation, be enforced by the imprisonment of the contracting cultivator.

In framing our rules we considered, first, the principle of the English law, and then how far it was applicable to India, and how far, if at all, it ought to be modified.

The general principle of the English law of specific performance is that the Court decrees specific performance where there is a single simple act to be done by the defendant, and the Court can at the same time give him that which he contracted for; or where there is some act about to be done by the defendant which he has contracted not to do, and which he may be ordered to abstain from doing. In the exercise of this jurisdiction the Courts in England have refused to deal with any matter which required a succession of acts or the exercise of skill, or the application of personal labour.

The Commissioners adopted this principle, and endeavoured by the rules they framed to make it free from the ambiguity with which, in some particular cases usually treated as exceptions, the English Court of Chancery has encumbered it.

Experience has taught the English courts to be very cautious in the exercise of this extraordinary jurisdiction, and we see nothing in the circumstances of India to make it expedient that the courts of that country should be entrusted with powers larger than those exercised by our own judges, and not given, so far as we are informed, to the courts of other countries. To this opinion we have given effect in framing the omitted sections. The rules of law which they embody are founded on principles of jurisprudence which we believe to be of universal application, and which, in our judgment, will be found the most equitable and beneficial for all classes of the inhabitants of India, and they are recommended by us for that reason alone.

We

We humbly submit this our Fourth Report to Your Majesty's Royal consideration.

Romilly. (L.S.)
Edward Ryan. (L.S.)
Robert Lowe. (L.S.)
Robert Lush. (L.S.)
John M. Macleod. (L.S.)
W. M. James. (L.S.)

Dated this 18th day of December 1867.

— No. 6. —

(No. 8, of 1868.)

India Office, London,
8 February 1868.
Legislative Department.

Sir,

THE Despatch of your Excellency in Council, dated 16th August (4) 1867, forwarding a draft of the Indian Contract Law which it is proposed to enact, together with minutes by your Excellency, the honourable Mr. Maine, and other members of your Council, has been considered by me in Council.

2. I now forward, for the consideration of your Excellency in Council, copy of a letter transmitting the Fourth Report of the Indian Law Commission, which contains the observations of Her Majesty's Commissioners on the Despatch under reply, and on the draft Act.

I have, &c.
(signed) *Stafford H. Northcote.*

To his Excellency
The Right Hon. the Governor General of India
in Council.

EAST INDIA, (CONTRACT LAW).

COPIES of PAPERS showing the present Position of the Question of a CONTRACT LAW for *India*; and, of all REPORTS of the INDIAN LAW COMMISSIONERS on the Subject of CONTRACTS.

(*Mr. Kinnaird.*)

Ordered, by The House of Commons, *to be Printed*
30 *April* 1868.

[*Price* 1 *s.* 1 *d.*]

EAST INDIA (MR. HUDSON, &c.).

RETURN to an Address of the Honourable The House of Commons, dated 4 March 1859;—*for*,

"COPIES of all CORRESPONDENCE, MINUTES, and ORDERS of the late Court of Directors and the Board of Control, of the Government of *India*, the Government of *Bombay*, the Political Agent for *Rajpootana*, the Magistrate and Superintendent of Police at *Bombay*, and of any Depositions taken by them respecting the Departure of Mr. *Hudson*, *Syed Uckber Ally*, and *Khirat Allie Khan* from *England*, and their Arrest and Detention, and Discharge from such Arrest, in *Bombay*; and all subsequent Correspondence and Papers relating to those Events."

India Office,
10 March 1859.

J. W. KAYE,
Secretary in Political and Secret Departments.

(*Mr. Ayrton.*)

Ordered, by The House of Commons, *to be Printed*,
11 *March* 1859.

BOMBAY BRANCH
OF THE
Royal Asiatic Society.
Class IX

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PETITION OF SYED UCKBER ALLY.

The humble Petition of *Syed Uckber Ally*, of the City of Jodhpore, for and on behalf, and as the duly authorised Representative of his Highness Maha Rajah Tukht Singh, Rajah of Jodhpore in and Ruler of the independent Protected State and Principality of Marwar, in the East Indies, and on behalf of Jeswunt Singh, the eldest Son, and the other Sons of the said Maha Rajah of Jodhpore, all being Minors, and under the guardianship of their Father,

Showeth,

THAT your petitioner came to this country six years ago, and has remained here hitherto, by command of his Highness the said Maha Rajah of Jodhpore, to endeavour, by just and proper means, to obtain restitution of the raj of Ahmednuggur, and its united rajs of Morassa and Bayur, which have been, by and with the sanction of the British Government, unjustly alienated from his family, and illegally bestowed upon Jowan Singh, Rajah of the State of Edur.

That in this case the British Government in India, in pursuance of treaties, and as the paramount power, assumed the functions of judge or arbitrator, to decide the mixed questions of law and fact (unencumbered as they were with state or political considerations) which have been raised by the parties claiming the rights of succession and inheritance to the said raj of Ahmednuggur and its dependencies.

That the decision complained of is not the independent judgment of the Governor-General in Council, formed after full investigation of the law and facts, and having the necessary information and evidence before them, but is the decision of a single individual, directed by the Government to report thereon, and is founded on and in conformity with such report. Your petitioner therefore craves leave to bring under the notice of your Honourable House the following facts:—

That the rulers of both Marwar and Ahmednuggur have at all times been Hindoos of the tribe called Rajpoots, and that the ruler of Edur belongs to the same tribe and family. That the late Rajah Kurrun Singh died in possession of Ahmednuggur, leaving two sons, videlicet, Perthee Singh and the said Maha Rajah Tukht Singh. That the former, as eldest son, succeeded to the raj, and continued in possession of it and its dependencies up to the time of his death, which happened on the 6th December 1839. At the time of the decease of Rajah Perthee Singh, his nearest surviving relative was his brother, your petitioner's master, his Highness Tukht Singh, to whom some time previously had been born a son, the above-mentioned Jeswunt Singh; one of the ranees or widows of the deceased Rajah was then pregnant, and on the 23d May 1840 was delivered of a son, who was named Bulwunt Singh. That in the interval between the death of Perthee Singh and the birth of Bulwunt Singh, Tukht Singh took upon himself the management of the raj on behalf of the expected heir, and continued during the lifetime of that child in such management; but that Bulwunt ingh only lived to attain the age of 16 months, and died in September 1841.

That the said deceased Rajah Perthee Singh, during his last illness and in anticipation of death, gave to the Ranee Sesodnee, his eldest wife, express direc-

tions, in the event of her not having a son, or in case of the death of such son, to adopt, according to the Rajpoot custom and religion, the said Jeswunt Singh, and accordingly, as soon after the death of her child as grief would permit, that is to say, in about 14 days after that event, the said ranee duly, and with all the ceremonial observances required by the Hindoo law and Rajpoot custom, adopted Jeswunt Singh, with the consent of the other two ranees of her deceased husband and of the chiefs of the state, his father Tukht Singh having formally surrendered and given him to her for that purpose.

That Jeswunt Singh *ipso facto* became the adopted son, heir, and representative, according to Hindoo law and custom, of his uncle, and as such immediately succeeded to and became Rajah of Ahmednuggur and its dependencies aforesaid, under the guardianship of his natural father, Tukht Singh, who continued as theretofore, previous to the birth and during the lifetime of the deceased infant, to manage the affairs of the said raj, as regent and guardian to said Jeswunt Singh.

That a deed formally declaring the said adoption was executed contemporaneously with the act, and remains as evidence thereof, although the execution of such deed was not in any way necessary, according to Hindoo law, to constitute such adoption valid.

That the principality of Jodhpore, the capital of Marwar, at the time when the above circumstances took place, was ruled over by his late Highness the Maha Rajah Maun Singh, who died on the 5th day of September 1843, without issue, but having on his deathbed requested that Tukht Singh might be elected to succeed him. Accordingly the widowed ranee of that prince and the sirdars or chiefs of Jodhpore proceeded to elect Tukht Singh, who thereby became adopted into the raj of Jodhpore, and under and by virtue of the laws and customs of Rajasthan removed from Ahmednuggur, and ascended the throne of Jodhpore, with the title of Maha Rajah. The investiture of Tukht Singh and his assumption of the government of Jodhpore were formally recognised by the British Government.

That upon the election of Tukht Singh becoming known, a claim was set up to the throne of Jodhpore on behalf of the then infant Rajah of Edur, which claim was most zealously supported by Captain Lang, the British political agent, in whose district Edur and Ahmednuggur are situate, and the representations of Captain Lang were supported by the Bombay Government, on the ground that the Rajah of Edur was one degree nearer related to his late Highness Maun Singh than the successor he had nominated, and who had been elected by the ranees and sirdars; but the then Governor-General, Lord Ellenborough, as he was bound to do, gave effect to the Hindoo law and Rajpoot custom, and confirmed and recognised Tukht Singh as aforesaid.

That on Tukht Singh's quitting Ahmednuggur, he left his son, Jeswunt Singh, under the guardianship of his adoptive mother, the Ranee Sesodnee, who then took upon herself the management of the affairs of the raj, as guardian of the infant rajah during his minority. This was in strict accordance with the law and custom, as is admitted in the report: "During the childhood and minority of the party adopted, all things are managed on his behalf by the widow of the deceased."

That the pretensions of the Rajah of Edur to the throne of Jodhpore having been disappointed, as above mentioned, the said Captain Lang put an attachment upon the raj of Ahmednuggur, alleging that Jeswunt Singh had not been adopted, but that Tukht Singh had, on the death of the posthumous son of the late rajah, ascended the throne, and become and continued the *de facto* ruler of the raj, and that having now resorted to Jodhpore, the throne of Ahmednuggur was vacant, and as in remote times it had formed part of Edur, it had, *ipso facto*, lapsed to that state, and should be given to the said Jowan Singh. He also sent orders that Jeswunt Singh should follow his father to Jodhpore, and wrote to the Government to postpone their approval of the selection of Tukht Singh for Jodhpore until the claims of the ruler of Edur were satisfied.

That in consequence of such proceedings on the part of Captain Lang, the Supreme Government sent instructions to Major (now Colonel) Thoresby, political agent for Jodhpore, to institute an inquiry among the sirdars of Marwar, so as to obtain their opinion as to the disposal of Ahmednuggur. That officer, after the necessary inquiry, made his report, dated the 17th January 1844, in which he said, that "the principal sirdars concur in opinion that Ahmednuggur should

should be regarded as a distinct sovereignty, appertaining to Maha Rajah Jeswunt Singh, in right of his adoption by the widow of Maha Rajah Perthee Singh, who was the elder brother of Maha Rajah Tukht Singh, and possessor of the country before him, and that the sirdars have further stated, that during the minority of Jeswunt Singh the affairs should be managed by his adoptive mother." Colonel Sutherland, who had long been the Governor-General's agent for the states of Rajpootanah (which includes the state of Marwar), also wrote to the Supreme Government, that on the minds of all those he had consulted on this subject, he did not find any who suspected that Jeswunt Singh was not regularly adopted, and was the rightful ruler of Ahmednuggur. The sirdars had, in fact, exercised their power of electing a chief, and thereby confirmed the adoption of Jeswunt Singh. Moreover, Major Thoresby, on the 21st May 1844, stated to the Supreme Government, "that Jeswunt Singh had been raised to the gadi by adoption and the suffrages of the chiefs."

That the Supreme Government was thereupon satisfied that Jeswunt Singh was both *de jure* and *de facto* Rajah of Ahmednuggur, having been solemnly adopted by the rance, and selected by the sirdars or chiefs, and approved by the people, a fact admitted by Captain Lang himself, who in his correspondence expresses apprehension of danger to the raj of Edur from the hostility of the people of Ahmednuggur. The Governor-General, Lord Ellenborough, also, as is admitted in the report, decided against the claims of the Rajah of Edur, and put an end to the discussion; for it states as follows—"The Government of India (of 1843) directed the withdrawal (from Ahmednuggur) of the persons deputed by Captain Lang, unless they were required to protect the state from any hostile movement from Edur," and required that "instructions should be issued to discontinue the correspondence."

That Jeswunt Singh remained in undisturbed possession of the raj from the issuing of such order until a change had taken place in the office of Governor-General, and the late Lord Hardinge arrived in India as Governor-General, when the said Captain Lang, in contravention of the orders of the Supreme Government, took the opportunity to revive the matter by forwarding a fresh memorial on behalf of the ruler of Edur, and by other means; and the Governor-General, it is believed in ignorance of the matters above detailed, and influenced by the persistent applications and representations of that local officer and of the Bombay Government, most unfortunately for his Highness, your petitioner's said master, instructed that Government to inquire "into the fact whether Tukht Singh was (at the time of his election as sovereign of Marwar) the *de jure* chief of the Ahmednuggur principality, or if he was only the *de facto* chief, occupying as regent for his son, the heir by adoption;" and the Bombay Government were at the same time ordered, "with reference to the opinions of the durbars of Central India and the customs of the Rajpoot principalities of the Bombay Presidency, to state its opinion upon a full consideration of all the circumstances of the case as to the rights of the respective claimants to the chiefship."

That this reference and order to report were conveyed to the Bombay Government by a despatch, dated 7th March 1845, and that, notwithstanding the strict injunctions as to the laws and customs by which the inquiry was to be directed and governed, the member of the Council of Bombay who undertook the investigation, and whose report is now impeached, did not scruple to use in such report the following words:—"In entering on this question, I must in the first place express my entire concurrence in the opinion of the Honourable Court of Directors, that in settling the succession to Ahmednuggur, the opinions and usages of Guzerat should be constituted as the standard of judgment." That this was a wilful violation of the orders of the Governor-General, and an adoption of an antecedent view of the Court of Directors, which probably only amounted to an assent to the opinions of the Bombay Government, conveyed to them when the case had first been brought under their notice, and, as admitted by the report, such view was expressed in a despatch dated as long previously as the 19th March 1844. It is therefore humbly submitted that this disregard of the Governor-General's subsequent express directions in ordering the inquiry invalidates such report, and renders every proceeding based thereon illegal and void.

That during the rule of Lord Hardinge as Governor-General, the report so framed in violation of his orders was deferred; but that shortly after the arrival of Lord Dalhousie at the seat of Indian Government, a voluminous and contradictory

tradictory report was prepared by Mr. J. P. Willoughby, then recently constituted a member of the Bombay Council, but who had formerly been chief secretary to that Government, and that such report was concurred in by his colleagues, and afterwards approved by the Supreme Government in India and the authorities in this country; but it is humbly submitted that such concurrence was merely formal, and that the obscurity and length of the report prevented the members of Government so concurring in Mr. Willoughby's views, most strongly expressed as they were, from giving that full and minute attention to the details of the case which was imperatively requisite, and that their confidence in the impartiality and ability of Mr. Willoughby induced an adoption of his views without due consideration.

That in the scope of this petition it would be impossible for your petitioner to enter into a full and clear analysis of the many errors of this report; but there are patent upon the face of it erroneous conclusions from the published facts, mistaken views of adopted legal and religious authorities, and a disregard of the first principles of evidence, in the reception of improper statements made by obscure native Indians having a direct interest adverse to the interests of his Highness's family and incredible in their nature, and an arbitrary rejection of the unexceptionable rebutting testimony produced. In fact, such report is only the expression of the solitary and peculiar opinion of one political officer, Captain Lang, in opposition to the expressed opinions and official reports of the late Colonel Sutherland, one of the most able and experienced Indian officers in the service of the British Government, of Mr. Greathead, of Major (now Colonel) French, of Major (now Colonel) Thorsby, and others, all of them gentlemen of acknowledged ability and integrity, and officially responsible for the truth and impartiality of their statements. It is therefore humbly submitted, that, had the said report been the production of an English judicial officer, it would not have had given to it, as here, the effect of a solemn judgment and decision; but would most certainly have been immediately reversed upon appeal. Your petitioner will now attempt, with the utmost brevity, to state the conclusions arrived at and advocated in the report, videlicet: That Tukht Singh was at the time of his election to Jodhpore the *de jure* Rajah of Ahmednuggur. That the alleged adoption of Jeswunt Singh did not take place as stated on the death of the infant Rajah Bulwunt Singh, but on the night previous to the departure of his Highness for Jodhpore. That the deed of adoption was fraudulently antedated. That such deed was absolutely necessary to give validity to the adoption, which was therefore void. That there was no power in the Ranee to adopt. That if the Ranee had the right to adopt on the death of her husband, it was extinguished by the birth of her son. That by the custom of Rajasthan and the Hindoo law, Ahmednuggur cannot be retained in the family of Tukht Singh in virtue of any right of Jeswunt Singh as heir. That Ahmednuggur, in consequence of Tukht Singh's removal to Jodhpore, was in the position of "a house without an heir." That in consequence it, according to custom of Rajasthan, reverted to Edur. And lastly, that those arrangements were recommended by public policy, as best calculated to ensure the peace and prosperity both of Guzerat and Rajasthan.

That your petitioner contests every one of the above propositions, and is prepared with unexceptionable and overwhelming evidence to establish the contrary, as alone reconcileable with the law, custom, and religion really applicable to the case, and consistent with reason, equity, and justice. That he has laid the printed copy of the above-mentioned report, without other comment or material for arriving at a judgment, before several gentlemen distinguished as practitioners of, or authors or commentators upon, the laws and customs which should have been and were by the Governor-General ordered to be applied to the case, and that those gentlemen have, without a single exception, declared the said report to be erroneous and partial upon the face of it, and have advised your petitioner that, according to law and equity, it ought to be set aside, and an inquiry in accordance with the original direction had. That your petitioner is also prepared with written authorities, civil, religious, and legal, the most indisputable and venerated in India, and the most highly esteemed in England, which fully support the view he ventures to urge; and which authorities, moreover, have been confirmed in this particular case by the majority of the durbars of Central India, to whom by virtue of the Governor-General's said order reference was made, but

whose

whose distinct opinions, together with those of the distinguished officers before mentioned, were disregarded by Mr. Willoughby in pronouncing his decision.

That some of the matters contained in the said report are direct and positive impeachments of the integrity and honour of his Highness Tukht Singh, and are dangerous to his position and dignity as a sovereign of a powerful and independent protected state of Rajpootanah, and are calculated, notwithstanding the high opinion of him as a prince and faithful ally avowedly entertained by the British Government, to bring his person and throne into contempt amongst the princes and people of India.

That it is a matter of continuous and inexpressible grief and shame to his said Highness, that he should have been systematically denied the opportunity of vindicating his rights and character, and that he with confidence appeals to the love of justice that distinguished your Honourable House, to afford him the means of freeing himself from such painful and unmerited obloquy and injustice.

Your petitioner, therefore, most humbly prays your Honourable House to take the premises into your consideration, and to redress the grievances of which your petitioner on behalf of his said master, Tukht Singh, complains; and that a Select Committee of your Honourable House may be appointed to inquire into the matters referred to in this petition; and that your petitioner may be permitted to appear before and be heard by such Committee, by himself, on behalf of his Highness his said master, and that counsel, agents, or witnesses, on behalf of his Highness, may also appear, and be heard or examined in proof of the allegations herein contained; and that your Honourable House will be pleased to grant such further and other relief and redress in the premises as to your Honourable House may seem meet, fitting, and just.

And your petitioner will ever pray, &c.

Syed Uckber Ally.

To the Honourable the Court of Directors of the East India Company.

31, Sussex-place, Kensington,
Honourable Sirs, 11 August 1857.

As vakeel to his Highness the Maharajah of Jodhpore, I beg to send, for the consideration of the Honourable Court, copy of a petition which has recently been presented to the House of Commons on behalf of his Highness's family in reference to the raj of Ahmednuggur, and also to forward copies of some of the opinions with which I have been favoured upon the merits of the claims of his Highness and his family to such raj.

Acting under the commands of my master, and supported by the sympathy of many kind and influential friends who have become acquainted with the facts of this case during my six years' sojourn in this country, it had been intended to submit the matter to the consideration of Parliament during the present Session; but I have abstained from doing so, well knowing the anxious desire of his Highness at all times to testify his devotedness to the interests of the British Government, and his unimpaired confidence that, if the circumstances were properly brought under the notice of your Honourable Court, an opportunity would be, even now, afforded him to vindicate his rights and character.

I trust I may be pardoned for bringing prominently under the notice of your Honourable Court the devoted friendship and zeal displayed by the prince my master upon the breaking out of the deplorable occurrences that now convulse the portions of India contiguous to his possessions, and the promptitude with which (as I learn from the public press) he came to the assistance of the British Government, and furnished a large force of Marwaree troops, who now form the garrison of Ajmere, and protect its magazines and treasury. I venture to express a hope that ample justice will be done to the motives by which his Highness is now and has ever been actuated, and that the manner in which he has testified his unwavering loyalty in the present crisis will convince your Honourable Court that a deep sense of humiliation and injured honour has alone impelled him, during so many years, to persevere in his solicitations for a reconsideration of his case. At this time, moreover, although it will continue to be the greatest delight of his Highness zealously to aid the paramount authorities, his efforts cannot fail to be greatly neutralised by the imputations of falsehood and fraud

which form the basis of the decision in the Ahmednuggur case, and which, if believed by the British Government to be founded on truth, must be an effectual bar to his obtaining their trust and confidence as a faithful supporter and ally.

I have therefore humbly to request that your Honourable Court will afford me an early opportunity of waiting upon them or the Honourable Chairman, accompanied by such Parliamentary and other gentlemen as may find it convenient to attend, that the facts may once again be brought to their notice, and the very moderate request with which, on behalf of his Highness, I shall then trouble the Honourable Company, may be, as I fervently trust, favourably considered. Awaiting the favour of a reply,

I have, &c.
(signed) *Syed Uckber Ally.*

Sir, East India House, 23 September 1857.

I AM commanded by the Court of Directors of the East India Company to acknowledge the receipt of your letter of the 11th of August, enclosing copy of a petition recently presented to the House of Commons on behalf of his Highness the Maharajah of Joudpore, and stating that his Highness is still confident that, if the circumstances of his case are "properly brought under the notice of the Court," an opportunity will, even now, be afforded "him to vindicate his rights and character."

I am commanded to state in reply that the Court having, after full consideration of the facts and arguments adduced in support of the conflicting claims to the raj of Ahmednuggur, put forth by the Joudhpoor and Edur families, concurred in the decision of the Government of Bombay in favour of the latter, cannot now, in the absence of any new matter brought forward by you for their consideration, consent to reopen the case. At the interview which you had with their Chairman and Deputy Chairman on the 1st instant, the views of the Court were fully stated to you, and they trust that you will be satisfied with the explanation then given.

With reference to that part of your letter in which you bring prominently under the notice of the Court "the devoted friendship and zeal displayed by the "Maharajah of Joudhpore upon the breaking out of the deplorable occurrences "which now convulse the portions of India contiguous to his possessions, and the "promptitude with which he came to the assistance of the British Government, "and furnished a large quota of Marwaree troops, who now form the garrison of "Ajmere, and protect its magazines and treasury," I am directed to state that the Court of Directors observe with great satisfaction the good disposition evinced by his Highness in the present conjuncture, and will not be unmindful of the services rendered to the British Government, at a time and under circumstances when the quality of friendship is best tested.

I am, &c.
(signed) *James C. Melvill,*
Secretary.

Syud Ackbar Ali,
&c. &c. &c.

31, Sussex-place, Kensington,
28 September 1857.

Right Honourable Sir,

I HAVE the honour to submit to your notice a translation of the substance of a letter which I received by the last mail from the court of my master, his Highness the Maharajah of Jodhpore.

I feel certain that (if not already informed of the circumstances through official channels) you will perceive with much satisfaction that in the assistance rendered by the prince my master, the initiative was taken by him; I also learn through the public press that he has placed another body of troops at the disposal of Government, amounting altogether to a force of 9,000 men, cavalry and infantry, contributed by him to assist in quelling the revolt which unhappily exists in India.

I recently did myself the honour to call the attention of the Honourable Court of Directors to the conduct of his Highness in the present crisis, and at the same time solicited an interview with the Chairs in reference to his claim to the Ahmednuggur

Ahmednuggur raj. An interview having been kindly conceded, I respectfully urged my master's desire and conviction that a fresh inquiry would be granted him; but was then informed by the Honourable Chairman that the present Court was unable to reverse or vary a decision come to by the Government of 1847.

A letter in this sense was also addressed to me on the 23d instant, by order of the Honourable Court.

I regret exceedingly this result of my application to the Honourable Court, as I purpose availing myself of the present Parliamentary recess to return and report to his Highness, and shall leave England on the 5th proximo for India, and know that his Highness will receive the intelligence I must convey to him with feelings of the deepest disappointment; especially at a moment when every energy he possesses is being exerted to the utmost to testify his unalterable attachment and loyalty to the British Government.

May I respectfully request that you will do me the honour to grant an audience during the present week, that I may bring the matter personally under your kind consideration previously to quitting this country?

I trust you will pardon the urgency of my request, which results from my being compelled to leave on so early a day, and favour me with an appointment for any time and place you may kindly think convenient in the meantime.

I have, &c.
(signed) *Syed Uckber Ally*,
Vakeel to his Highness the Maharajah of Jodhpore.

To the Right Honourable Robert Vernon Smith,
President of the Board of Commissioners
for the Affairs of India.

SUBSTANCE of part of a Letter (in Persian character) from the Court of Jodhpore to the address of Syed Uckber Ally.

1 of Zeekanda, 1273 Hijree.

"As soon as the news of mutiny reached his Highness through the public press, he instantly despatched a khareetha or letter to the resident at Ajmeer and to the agent at Jodhpore, requesting that his assistance should be accepted, and accordingly afterwards, when the troops at the Naseerabad station mutinied, in compliance with the agent's wish, he despatched 5,000 cavalry and infantry for the protection of the Ajmeer and Nayanuggur stations, under the command of Singhee Kosul Raj Jee, who retains the command, subject to the military advice and authority of the British Government, and conducts matters to their satisfaction. His Highness, moreover, attends to any suggestion that may tend to quell the disturbance, and omits no opportunity to render instant support as a staunch adherent to the friendship which happily subsists between the two Governments, and continually regards that friendship, and has the success and prosperity of the British Government at heart; but especially in this crisis his attention is solely directed to quelling this disturbance, to the exclusion of all other matters and interests."

Sir, India Board, 30 September 1857.

I AM directed by the Commissioners for the Affairs of India to acknowledge the receipt of your letter of the 28th instant, and to state that the President of the Board will be happy to see you at this office on Friday at one o'clock, in order that he may express to you the gratification with which he has heard of the loyal conduct of the Maharaja of Joudpore, and that you may convey to his Highness the sentiments of respect which are felt for him by the Government of the Queen. But he must entirely decline to enter into any personal discussion with you as to the claims of his Highness. That subject can only be treated, in writing, through the ordinary channel of the Court of Directors of the East India Company.

I am, &c.
(signed) *George Clerk.*

Syud Uckber Ally,
31, Sussex-place, Kensington.

To the Honourable the Court of Directors of the East India Company.

8, Hereford-square, Brompton,
19 July 1858.

Honourable Sirs,

Acting upon the suggestion of your Honourable Chairman in an interview with which I was favoured in May last, I beg to bring to the notice of the Honourable Court the following circumstances connected with my detention at Bombay.

For the last four years I have acted as the agent in London of his Highness the Maharajah of Jodhpore, and, in that capacity, accompanied by Syed Uckber Ally, the vakeel, and Khirat Allee Khan, his secretary, I was honoured with an interview in the autumn of last year with the then Honourable Chairman and Deputy Chairman, on which occasion, in addition to urging upon their attention the facts connected with his Highness' claim to the Admednuggur raj, I explained our intention to proceed, during the recess of Parliament, to see his Highness, and ascertain his final wishes in reference to the petition of his vakeel, which had been recently presented to the House of Commons, and which was intended to be brought forward for discussion early in the present Session. As the circumstances of that interview are probably in the knowledge of your Honourable Court, I abstain from saying more than that we felt justified in believing the course we proposed to adopt had the approval of the Chairs, and not only that no impediment would be thrown in the way of our accomplishing our intended mission, but that facilities would be freely afforded to the representatives of a native prince, whose important services in the critical circumstances of India were so fully recognised. Moreover, this belief was confirmed in a subsequent interview with the Right Honourable the then President of the Board of Control, who assured us that a despatch would be forwarded to Lord Elphinstone to wait our arrival at Bombay, acknowledging, on the part of Her Majesty's Government, the estimation in which such services were held, and requesting him to facilitate our journey to Jodhpore.

Encouraged by these assurances, we proceeded to Bombay in a steamship, *viâ* the Cape of Good Hope, and after an unusually long passage, arrived at that Presidency in February last, where, to my astonishment, I found my arrival had long been anticipated, and the police had orders to keep me under strict surveillance, and prevent me from leaving the island.

On becoming acquainted with this fact, I immediately waited upon the Political Secretary to the Bombay Government, and found that my detention was in obedience to instructions issued by the Government of India. I also discovered that no information from this country had reached the Right Honourable the Governor of our intended journey, nor had the correspondence which had taken place here between the vakeel and the Honourable Company and the Board of Control been transmitted.

I, of course, protested against any interference with my liberties as a British subject, and subsequently addressed a letter to the Secretary, requiring the cessation of the surveillance, to which I had been subjected. In answer I was informed that Government would permit me to reside in any part of the Bombay Presidency, but that I could not be permitted to proceed to foreign territory until the permission of the Government of India should have been received. Two other communications from the Bombay Government followed this, in one of which I was given to understand that the Government of India declined to grant me permission to proceed to Jodhpore, and authorised my removal, should I enter any part of that territory. The other stated, "That this Government has received the instructions of the Government of India, that in case you should enter any part of the territories which were not in the possession of the East India Company on the 1st January 1800, with a view to proceeding to Rajpootana, you are to be stopped and dealt with, under the advice of the law officers of Government, for a violation of the 82d section of the 3 & 4 Will. 4, chapter 85."

In addition to the surprise and disappointment I experienced at the unexpected course pursued towards me, so different to the prospect which had been held out in this country, the several communications I received in Bombay were so inconsistent with each other, and the information I obtained through other sources was of so alarming a character, that I felt I should imperil even more than my liberty in remaining in India; and consequently I determined to return

to

to England, and bring the matter under the notice of Parliament. Conceiving, however, that to some extent my annoyances might have been the result of omission or inadvertence on the part of the authorities here, arising out of the pressure of circumstances and the complicated difficulties at that time attending the administration of Indian affairs, I concluded, in the first instance, frankly to state my grievance to your Honourable Court, and ascertain whether it was a result of deliberate intention to impede my prosecution of a perfectly legal and legitimate object, or an accidental consequence of the peculiar position in which the present control and future management of India were involved.

Accordingly, on my arrival in London, I waited on the Honourable the Chairs, and from the courteous way in which I was received, and the explanations with which I was favoured, I indulge the belief that it is only necessary to have the circumstances brought fairly under the consideration of your Honourable Court in order to obtain such reasonable amends for the injury I have suffered as are now possible.

When the foregoing circumstances and the correspondence in the possession of the Secret Committee shall have been duly considered, I confidently express a hope that the very moderate requests I have now the honour to prefer, will be at once conceded. They are these: that I may be favoured with a passport under the powers conferred by the 3 & 4 Will. 4, c. 85, to proceed in or after October next to Jodhpore, or any other place in India, and that in the meantime the Supreme and Presidential Governments may be informed that I have the authority of Government to travel in India, in order that any circular instructions that have been issued respecting me may be withdrawn.

The other request I have to make is, that your Honourable Court, taking into consideration the peculiar circumstances, will entertain the question of a pecuniary indemnity, and grant or recommend such compensation as shall be commensurate with the loss and disappointment I have sustained.

I have, &c.
(signed) *E. N. Hudson.*

Sir, East India House, 21 August 1858.

I HAVE laid before the Court of Directors of the East India Company your letter of the 19th of July, setting forth the circumstances of your detention by the authorities at Bombay, and requesting that the Court will furnish you with a free passport to travel in any part of India, and will afford you pecuniary compensation for the injury you have sustained by the interruption of your journey to Joudhpore.

In reply I am commanded to state, that the Court cannot so set aside the authority of the local Governments, as to furnish you in this country with the required passport; but they will forward your letter together with this answer to the Government of Bombay, and call for a full report of the circumstances which induced them to cause your detention at that place.

I am, &c.
(signed) *J. D. Dickinson,*
Secretary.

E. N. Hudson, Esq.
&c. &c. &c.

No. 1 of 1858.—Political Department.

The Secretary of State for India to the Right Honourable the Governor in Council of Bombay, dated the 22d September.

My Lord,

Para. 1. A copy of a letter addressed to the Court of Directors by Mr. Hudson, a gentleman recently employed in a professional capacity by the Maharajah of Joudhpore, together with a copy of the Court's answer to the same, is herewith transmitted to you for your information.

2. From papers forwarded by your Government to the Secret Committee, and subsequently made public, it appears that on the 25th of December Brigadier-general Lawrence, the Governor-General's agent in Rajpootana, wrote to your

Government from Ajmere, intimating that he had received intelligence of Mr. Hudson's departure from England, and requesting that "active steps" might be taken "immediately on his arrival to secure his detention under surveillance at the Presidency," or otherwise that he might be "deported back to England." For making this unusual request, Brigadier-general Lawrence assigned no reasons.

3. On the 9th of January, your Government directed the Commissioner of Police at Bombay, to cause strict watch to be kept over Mr. Hudson on his arrival, and not to allow him to leave the island for the interior. On the 16th of January, you instructed the Company's Solicitor to obtain and submit to Government the opinion of the Advocate-General as to whether Mr. Hudson, as a British subject, could be detained in Bombay, as suggested by Brigadier-general Lawrence. The Advocate-General gave his opinion (in accordance with the terms of section 81, cap. 85, 3 & 4 Will. 4) that Mr. Hudson was at liberty to reside in any part of the country which had been under the Government of the East India Company previous to the 1st of January 1800, but that in any other part of India he might be legally arrested by order of your Government. Mr. Hudson was therefore informed, that he was permitted to reside in any part of the Bombay Presidency, but not to proceed into foreign territory until the permission of the Government of India should be received. He was, therefore, unable to fulfil his intention of proceeding to Joudhpore. What the instructions of the Government of India were, does not appear from the papers forwarded to the Secret Committee.

4. Against the proceedings of your Government in this matter Mr. Hudson has protested, and he has sought to obtain not only future protection in the shape of a free passport to proceed to any part of India, but compensation for the past injuries which he alleges that he has sustained. But, in the present state of the information before the Council, it is impossible to form any opinion respecting the merits of the case. The papers received from your Government tell what was done. They do not tell why it was done. You are desired, therefore, to forward with the least possible delay, a statement of the grounds, whether of a general or a special character, which led you to prohibit Mr. Hudson's journey to Joudhpore.

I have, &c.
(signed) *Stanley.*

No. 8 of 1858.—Secret Department.

To Her Majesty's Principal Secretary of State for India.

My Lord,

We have the honour to acknowledge the receipt of your Lordship's letter, with enclosures, No. 1, dated the 22d September last, relative to the detention in Bombay of Mr. Hudson.

2. In our letter, No. 21, dated the 24th February 1858, to the address of the Secret Committee of the Honourable the Court of Directors, we reported our proceedings up to that date relative to this gentleman. We now beg to submit our subsequent proceedings on the subject, as per annexed abstract of contents.

3. We at the same time beg to explain, that as Brigadier-general Lawrence, the Governor-General's officiating agent for the states of Rajpootana, is not under the authority of this Government, we did not, on the receipt of that officer's letter, requesting us to prevent Mr. Hudson from proceeding to Joudpore, deem it expedient to call upon him for his reasons for making such a requisition.

4. But on the arrival of Mr. Hudson in Bombay, we reported the circumstance to the Government of India, and under their instructions we directed our Political Secretary to address to that gentleman a letter, informing him that he would not be permitted to proceed to Joudpore.

5. We beg to add, that on the receipt of your Lordship's present despatch, we forwarded a copy of it to Brigadier general Lawrence, and called upon him to furnish the required information as to the reasons which induced him to request

request that Mr. Hudson be prevented from proceeding to Rajpootana, and to state, that on receiving the same we will lose no time in addressing your Lordship again.

We have, &c.

Bombay Castle,
24 November 1858.

(signed) *Elphinstone.*
A. Malet.
Henry Reeves.

No. 1 of 1859.—Secret Department.

To Her Majesty's Principal Secretary of State for India.

My Lord,

1. In the 5th para. of our despatch, No. 8, dated the 24th November last, we informed your Lordship that, on the receipt of your letter, No. 1, dated 22d September 1858, we forwarded a copy of it to Brigadier-general Lawrence, the Governor-General's officiating agent for the States of Rajpootana, and called upon that officer to state the reasons which had induced him to request that Mr. Hudson be prevented from proceeding into Rajpootana.

2. We now do ourselves the honour of submitting copy of a letter from Brigadier-general Lawrence, dated the 13th December 1858, furnishing the required information, and to state that we are of opinion that any further agitation at the time of the claims of the Raja of Joudhpoor to the estate of Ahmednuggur, which had been awarded to the Raja of Edur by the Government of India, might have added to the many difficulties of the complications which had arisen in the Mahee Kanta.

We have, &c.

Bombay, 10 January 1859.

(signed) *Elphinstone.*
A. Malet.
Henry Reeves.

No. 2 of 1857.

From Brigadier-General *G. H. P. Lawrence*, Officiating Agent to Governor-General for the States of Rajpootana, to the Secretary to Government, Bombay.

Sir,

Having learned on reliable authority that Mr. E. N. Hudson, an English attorney, was to have left London in company with the Joudpore Vakeel Akbar Allee (who has for six years resided in London) early in October last, in the steam-ship "Bombay Castle" for Bombay, *en route* to Joudpore, as an agent of his Highness the Raja of Marwar, on the subject of the Ahmednuggur succession, I have the honour to request that active steps may be taken immediately on his arrival, to secure his detention under surveillance at the Presidency, or otherwise that he may be deported back to England.

2. I need not at this critical time enter minutely into the reasons that induce me to desire Mr. Hudson's detention in Bombay, pending the orders of the Government of India; suffice it to say, that both the Joudhpore political agent and myself particularly desire that he should no be permitted to enter the Marwar territory on any plea.

I have, &c.

Ajmere, 25 December 1857.

(signed) *G. St. P. Lawrence.*

No. 66 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to *William Crawford*, Esq., Commissioner of Police, Bombay.

Sir,

I am directed by the Right Honourable the Governor in Council to enclose copy of a letter from the Governor-General's Officiating Agent for the States of

Rajpootana, No. 2, dated the 25th December 1857, and to request that, on the arrival of Mr. Hudson in Bombay, you will cause a strict watch to be kept over the proceedings of that gentleman, and that you will not allow him to leave the island for the interior.

I have, &c.

Bombay Castle, 9 January 1858. (signed) *H. L. Anderson.*

No. 200 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to *J. P. Bickersteth*, Esq., Honourable Company's Solicitor.

Sir,

I AM directed by the Right Honourable the Governor in Council to transmit to you copy of a letter from the Governor-General's Officiating Agent for the States of Rajpootana, No. 2, dated the 25th December 1857, and to request that you will obtain and submit to Government the opinion of the Advocate-General, whether Mr. Hudson, as a British-born subject, can, on his arrival, be detained in Bombay, as suggested by Brigadier-general Lawrence.

I have, &c.

Bombay Castle, 16 January 1858. (signed) *H. L. Anderson.*

No. 91 of 1858.—Secret Department.

From *William Crawford*, Esq., Commissioner of Police, to *H. L. Anderson*, Esq., Secretary to Government.

Sir,

No. 66. 9th January 1858. No. 332. 3d February 1858.

WITH reference to your letters noted in the margin, I have the honour to enclose, for the information of the Right Honourable the Governor in Council, a statement which has been just made to me by the commander of the steamer "Bombay Castle," regarding the vakeel of Joudhpore and party, and some of the Queen of Oude's people, who have arrived by that vessel.

2. I enclose the book produced by Captain Taylor.

3. The whole of these persons are under the surveillance of the police, but I have not yet received Mr. Forjett's report of his proceedings regarding them.

4. I would suggest that the whole of their luggage and goods be taken carefully on shore to the custom-house and strictly examined, in order that objectionable books or other articles may be detained.

I have, &c.

(signed) *Wm. Crawford*,
Commissioner of Police.

Bombay, Police Office,
5 February 1858.

George Taylor, commander of the steamer "Bombay Castle," appears and states: I arrived in Bombay yesterday morning from London, with several passengers, among whom were a Mahommedan named Syed Acbar Ali, and another named Khirat Ali Khan; they are so named in my list of passengers. I understood the Syed to be the vakeel of the Maharaja of Joudhpoor, and the other Mahommedan was called his secretary, and I have heard since I came here, that he was formerly a moonshee with Sir Charles Napier in Sind. I understand that he has been seven years in England, and he speaks English perfectly. A Mr. Hudson accompanied these persons. He is with them as a kind of adviser. He told me that he had been in the navy, and had served on the coast of Africa under Captain Denham, through whom, I understood from his conversation, he had been dismissed the service. He told me that he had subsequently studied the law, and had been enrolled as an attorney. He is a drunken, violent character, and I had to threaten to confine him. He apologised, but subsequently resumed his violent conduct. The vakeel and secretary drank spirits, and were daily

daily excited from the effects of spirits. They frequently discussed the affairs of India. The Mahommedan secretary and Mr. Hudson frequently in my hearing expressed themselves in language violently hostile to the proceedings of the British Government in India. On one occasion, the Mahommedan secretary, in my presence and in the presence of the passengers, said that he could murder Lord Dalhousie without remorse, and throw his body to the vultures, or something to that effect. I called him to order. He frequently expressed his sympathy with the rebels and mutineers, and expressed his wishes for their success. He frequently stated that the country would be much better governed under native princes and rulers than by the English. The Syed vakeel never so expressed himself. He spoke English indifferently, and had little to say. I heard Mr. Hudson say that he had native dresses, by means of which he intended to penetrate into the country in disguise.

I now produce a book, entitled, "Oude, its Princes and its Government vindicated." It was given to me by one of the passengers, Mrs. Fellows, who told me that Mr. Hudson had sent it to her, and that he had assisted in its compilation. I understand that a case of these books is on board intended for circulation here. There are on board four cases, containing goods belonging to the vakeel and his party, besides luggage.

I also brought out six persons of the Queen of Oude's retinue. The vakeel paid their passage. I have two other native passengers; one named Meerjan acted as the servant of the vakeel; he married a wife in England, from whom he absconded, and came out with the vakeel. The other was a native servant from this part of India, and sent on board from the Strangers' Home in London.

(signed) *George Taylor.*

Taken this 5th day of February 1858, before me.

(signed) *Wm. Crawford,*
Commissioner of Police.

(True copies.)

(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Honourable Board, dated 5 February 1858.

RESOLVED, that the suggestion of the Commissioner of Police relative to the luggage of these persons alluded to in this letter, be acted on.

That the King of Oude's vakeel and secretary and followers be arrested and detained until the pleasure of the Government of India can be ascertained.

That the decision of Government relative to Mr. Hudson will be hereafter communicated.

(signed) *Ephinstone.*
H. Somerset.
A. Malet.
H. W. Reeves.

(True copy.)

(signed) *H. L. Anderson,*
Secretary to Government.

No. 104 of 1858.—Secret Department.

From *W. Crawford,* Esq., Commissioner of Police, to *H. L. Anderson,* Esq., Secretary to Government.

Sir,

WITH reference to your letter, No. 437, dated the 6th instant, I have the honour to enclose one of this date, No. 68, from the Deputy Commissioner of Police, and would respectfully solicit the instructions of the Right Honourable

the Governor in Council, as to whether the luggage of the vakeel of Joudhpoor and party, which has already passed through the custom-house, should now be searched.

I have, &c.
(signed) *W. Crawford*,
Commissioner of Police.

Bombay, Police Office,
8 February 1858.

No. 68 of 1858.

From *C. Forjett*, Esq., Deputy Commissioner of Police, to *William Crawford*, Esq., Commissioner of Police.

Sir,

With reference to your endorsement, No. 100, dated 6th instant, forwarding copy of a letter to your address, No. 437, of the same date, from Mr. Secretary Anderson, and requesting me to direct an officer of police to attend at the custom-house to superintend the searching of the luggage and goods of the vakeel of Joudpoor and party, I have the honour to state that 13 boxes of their luggage were landed on Saturday evening, and are now in the tents in their occupation, which Mr. Spooner tells me have not been searched; I beg therefore to solicit instructions as to whether the said luggage may not be searched without loss of time.

I have, &c.
(signed) *C. Forjett*,
Deputy Commissioner of Police.

Bombay, 8 February 1858.

(True copies.)

(signed) *H. L. Anderson*,
Secretary to Government.

No. 478 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to *W. Crawford*, Esq., Commissioner of Police.

Sir,

I am directed by the Right Honourable the Governor in Council to acknowledge the receipt of your letter dated the 8th instant, No. 104, enclosing a communication from the Deputy Commissioner of Police relative to the baggage of the vakeel of Joudpore.

2. In reply, I am desired to inform you that the Right Honourable the Governor in Council sees no reason why the baggage of the vakeel should be exempted from search, and accordingly directs it may undergo the necessary scrutiny in such a manner as will give as little offence as possible.

I have, &c.
(signed) *H. L. Anderson*,
Secretary to Government.

Bombay Castle,
9 February 1858.

(True copy.)

(signed) *H. L. Anderson*,
Secretary to Government.

No. 498 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to *W. Crawford*, Esq., Town Magistrate and Commissioner of Police, Bombay.

Sir,

Referring to my letter, No. 437, dated the 6th instant, I am directed by the Right Honourable the Governor in Council to inform you that the Jodhpoor vukeel

vakeel and the other persons therein alluded to should not be imprisoned as criminals.

2. I am at the same time desired to request that you will obtain and submit to Government the evidence of any other persons who may have been on board the " Bombay Castle," in addition to, or in corroboration of that given by the late master of that vessel.

3. The Right Honourable the Governor in Council requests that in the meanwhile you will inform Syed Akbar Allee, that any inconvenience which his arrest may have occasioned, may be referred by him to the seditious language which is sworn to have been frequently used by his secretary on board the " Bombay Castle."

I have, &c.
(signed) *H. L. Anderson,*
Secretary to Government.

Bombay Castle,
10 February 1858.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

No. 118 of 1858.—Secret Department.

From *William Crawford,* Esq., Commissioner of Police, Bombay, to *H. L. Anderson,* Esq., Secretary to Government.

Sir, Bombay, Police Office, 12 February 1858.

In acknowledging the receipt of your letter, No. 498, dated the 10th instant, I have the honour to enclose, for the information of the Right Honourable the Governor in Council, statements made before me by the persons named in the margin, with reference to the seditious language alleged to have been used by the secretary of Syed Akbar Ally, the vakeel of Joudpoor, on board the steamer " Bombay Castle," on the voyage from London to this place.

Rev. John Huber.
Rev. Christian Wurtele.
Rev. August Meanner.
Dr. H. P. Lawrence.
J. W. Quihampton.
H. J. Fitter.

2. It will be observed that the statements now submitted do not corroborate that of Captain Taylor in regard to the language used by Mr. Hudson and the person known as Mr. Khan.

3. Search has been made of the luggage and goods of the vakeel and his party, but no article of a suspicious character has been found. The books and papers found with them, contained in three boxes, and a carpet bag, sealed up, are now in my possession, and I solicit the instructions of Government as to whether they should be examined in my office or in that of the Oriental translator to Government, in the presence of the parties.

I have, &c.
(signed) *W. Crawford,*
Commissioner of Police.

The Reverend John Huber appears before the undersigned, and saith:—I am a missionary of the German Evangelical Mission, and a native of Zurich in Switzerland. I came from London to Bombay as a passenger on board the steamer " Bombay Castle," Captain Taylor, which arrived here on the 4th instant. There were ten saloon passengers, among whom were a Mr. Hudson, also two Mahomedans, whom I knew by the names of Mr. Syed and Mr. Khan. The former, I understood, was some kind of agent for the Raja of Joudpoor, and the latter was his interpreter and secretary. I had very little conversation with Mr. Syed, who seemed to be smoking all day, and to be often excited with drink in the evenings. I had frequently conversations with Mr. Khan; we discussed religious subjects, and also matters connected with India. He expressed his admiration of " Old England," and said that he would be glad to see the

Government of the East India Company abolished. I understood him to desire that the Government of India should be transferred to the British Crown. On one occasion I asked him whether he would not rather see a native government established in India than that of the British; I understood him to say that he would prefer the British Government. He stated that in the hands of the British, measures were taken to educate the people, and that justice was fairly administered. I have heard the King of Oude mentioned at table, but I did not understand what was said, being imperfectly acquainted with English. Mr. Khan was not in the habit of getting drunk; I only once saw him tipsy, and that was when we stopped at the Island of Ascension. I had frequent conversations with Mr. Hudson. He is an excitable person, but did not make much noise. I was sick for many weeks during the first part of the voyage, and did not observe what passed amongst the other passengers; the behaviour of Mr. Khan was gentlemanly, more so than I expected to find from a Mahomedan. Mr. Hudson never spoke to me on political matters connected with India. The captain seemed to me to drink moderately at table.

(signed) *John Huber.*

Taken and sworn this 11th day of February 1858, before me,

(signed) *W. Crawford,*
Commissioner of Police.

THE Reverend Christian Wurtele appears, and saith:—I am a native of Wurtemberg and a missionary of the German Evangelical Mission. I came from London to Bombay in the steamer "Bombay Castle." There were ten cabin passengers on board, among whom were a Mr. Hudson, also two natives, whom I knew as Mr. Syed and Mr. Khan. I understood Mr. Syed to be the agent of some Raja in India; I understood Mr. Khan to be the interpreter of Mr. Syed. I had frequent conversations with Mr. Khan on the way out. He often expressed anxiety about his wife and family, who he told me were at some place on the banks of the Ganges. I asked him many questions about India. I do not recollect that he ever spoke to me about the mutinies in India, nor about the kingdom of Oude. He did once or twice on deck speak of the disturbances. From what I understood, he seemed to desire the success of the British. Mr. Syed and Mr. Khan were in the habit of drinking spirits, the former more than the latter. Mr. Hudson sometimes spoke of India, but I did not understand all he said.

(signed) *Christian Wurtele.*

Taken and sworn this 11th day of February 1858, before me,

(signed) *W. Crawford,*
Commissioner of Police.

THE Reverend August Maenner appears, and states:—I am a missionary of the German Evangelical Mission. I am a native of Wurtemburg. I came to Bombay a passenger in the steamer "Bombay Castle." Mr Hudson was a passenger in the same vessel, also two Mahomedans, whom I knew as Mr. Syed and Mr. Khan. I do not know who Mr. Syed was. It was said on board that he was a Raja. He appeared a weak man, and I thought that Mr. Khan had accompanied him to Europe to have the care of him. I know that Mr. Syed liked spirits, but I never saw him intoxicated. One day between Ascension and the Cape I had some conversation with Mr Khan about India. He expressed his admiration of the British Government, from the rule of which he said India received many benefits. I never heard him express any sympathy with the mutineers or rebels. I have heard the kingdom of Oude mentioned, but I did not understand what was said. I do not know that Mr. Khan was in the habit of drinking too much spirits. On one occasion I saw that he had taken too much. The captain did not seem to take too much wine at table.

(signed) *August Maenner.*

Taken and sworn this 11th day of February 1858, before me,

(signed) *W. Crawford,*
Commissioner of Police.

HDYE PARKER LAWRENCE, Esquire, appears, and saith:—I am assistant surgeon attached to the 11th Regiment of Native Infantry. I came from London as a passenger on board the steamer "Bombay Castle," of which vessel Captain Taylor was the master. There were about ten saloon passengers. Two of the passengers were Mahomedan gentlemen, known to me as Mr. Syed and Mr. Khan. I believe they were journeying to a native court in India. Both are natives of the North-West Provinces, and neither of them, as far as I understand, have ever been in Bombay before. I have heard no conversation from either of them regarding the existing state of the North-West Provinces, or of India. I never heard Mr. Khan make any improper remarks about Lord Dalhousie, in reference to the annexation of Oude. I have frequently heard him praise that nobleman, as an able governor and the most talented that England had ever sent to India. He mentioned the circumstance of Lord Dalhousie having sent his lady round the Cape, and of her having died at sea. He said it was a pity she had but been sent overland. I suggested that his Lordship had, like other men, been guided by his medical advisers, and there the matter dropped. Mr. Hudson came on board with them, but I do not know in what capacity he is in with regard to them. I never heard him speak in a disrespectful or improper manner in reference to the annexation of Oude. I have heard him condemn the mutineers, and say that no punishment was severe enough for them.

(signed) *H. Parker Lawrence,*
Assistant Surgeon, 11th Regiment, N. I.

Taken and sworn before me this 11th day of February 1858,

(signed) *W. Crawford,*
Commissioner of Police.

JOHN WYBORN QUIHAMPTON appears, and saith:—I am chief officer of the steamer "Bombay Castle" of which vessel George Taylor was the commander. We left Gravesend on the 10th of October. There were about ten cabin passengers, of these there were two native gentlemen, and a Mr. Hudson, who appeared to be a kind of agent for them. The native gentlemen were named Syed Ali and Khyrat Khan Ali, but they were called on board Mr. Syed and Mr. Khan. I understood Mr. Syed to be some kind of agent to the Raja of Joudpore, and that he had gone to England on the business of his master. Mr. Khan was the clerk of Mr. Syed. I talked to Mr. Syed every day on all subjects. I don't know that ever I talked to him about the Raja of Joudpore or the mutineers in India. I had not so much conversation with Mr. Khan. I have heard him say that the Raja of Joudpore was a friend of the English, and supplied them with money and troops. One day, about eight or half-past eight o'clock in the evening, I went down into the cabin to take my grog; Mr. Khan and other passengers were sitting at the table; Mr. Khan was excited and noisy, he was talking about Lord Dalhousie. I understood him to say that Lord Dalhousie's Government had been unjust towards the natives of India in general. He said, with great emphasis, that if Lord Dalhousie were there, he would like to cut his throat, or wring his neck, or something to that effect. I never heard him express any sympathy with the rebels or mutineers. In speaking of the mutineers, I have heard him say that India would suffer by them, and that Europeans would not have the same confidence in the natives as before. I never had much to say to Mr. Khan. Mr. Hudson seemed to me to be a temperate man. I never heard him say anything about the measures of the Indian Government, as regards the native princes or the natives generally. He was not a violent man according to my opinion. I never heard any seditious language on board, except that about Lord Dalhousie can be called such. The people of the Queen of Oude on board, seemed poor people, one was a Bhistie, two were Durzees; one had charge of the silver, and one a cook.

(signed) *John Wyborn Quihampton,*
Chief Officer.

Sworn this 12th day of February 1858, before me,

(signed) *W. Crawford,*
Commissioner of Police.

HENRY JOHN FITTER appears, and saith:—I am a veterinary surgeon in the service of the East India Company, and attached to the 2d Regiment of Light Cavalry. I came out from England a passenger in the steamer "Bombay Castle." Among the saloon passengers were two Mahomedans, who were known on board as Mr. Syed andMr. Khan. Mr. Hudson was of their party. My impressions with regard to these parties were at first unfavourable, and I did not associate or converse with any of them for more than a month after leaving London. Mr. Syed used to indulge excessively in the use of spirits. Mr. Khan, I thought, also did so; Mr. Hudson appeared a temperate man. I afterwards did not object to talk to these persons. I often spoke to Mr. Syed, who appeared a goodnatured amiable kind of man. We frequently spoke about horses, and I asked him some questions about Joudpoor, but we had no conversation about the present state of the country. To the best of my belief, I never heard him make any observation of a disloyal nature in regard to the Government of India. I may say the same with regard to Mr. Khan. One day, after dinner in the saloon, Mr. Khan spoke of Lord Dalhousie in a disrespectful manner. He was excited with liquor. He spoke of Lord Dalhousie having sent Lady Dalhousie round the Cape, instead of overland, when she was ill. His language was abusive towards that nobleman, but I did not hear him say anything of a seditious nature, or I should have taken notice of it. I and others remonstrated with him, and he left the table. I have never observed any expression of sympathy with the mutineers or rebels by either Mr. Syed or Mr. Khan. I have heard Mr. Hudson discuss with Mr. Khan matters connected with the present state of India. He generally spoke of the Joudpoor affairs. I never heard him say that the conduct of the Government of India towards native states, or towards the people of India, was unjust. I understood him to mean, that the measures of Government in regard to the Joudpoor claims were unjust. I understood from Mr. Hudson that he intended to proceed to Joudpoor to see the Raja, as his attorney or agent. I believe Captain Taylor who commanded the "Bombay Castle" to be a sober man, but I believe him to be capable of telling most egregious falsehoods; and I believe all the other passengers were most uncomfortable on board. Mr. Khan one day gave me a pamphlet, which I gave Mrs. Fellows.

(signed) *H. J. Fitter.*

Taken and sworn this 12th day of February 1858, before me,

(signed) *W. Crawford,*
Commissioner of Police.

(True copies.)

(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Honourable Board, dated 12th February 1858.

Resolved,—The evidence of the passengers on board the "Bombay Castle" being exculpatory of the Jodpore vakeel and his secretary, they may be released, but not permitted to leave Bombay until a reply has been received to the reference made to General Lawrence.

(signed) *Elphinstone.*
H. Somerset.
A. Malet.
H. W. Reeves.

(True copy.)

(signed) *H. L. Anderson,*
Secretary to Government.

No. 84 of 1858.—Secret Department.

From *J. P. Bickersteth*, Esq., Honourable Company's Solicitor, to *H. L. Anderson*, Esq., Secretary to Government, Bombay.

Sir, Bombay, 5 February 1858.

I HAVE the honour to forward a copy of the opinion given by the Advocate-general upon the question submitted in your letter, No. 200, dated 15th ultimo, with reference to the suggested deportation of Mr. E. N. Hudson.

I have, &c.
(signed) *J. P. Bickersteth*,
Honourable Company's Solicitor.

No. 7 of 1858.

OPINION.

MR. HUDSON cannot be prevented from landing at Bombay, and after he has landed he may reside at Bombay, and proceed to, and reside in, and pass through, any part of the territories which were under the government of the East India Company previously to the 1st of January 1800, and any part of the territories ceded by the Nabob of the Carnatic, and of the province of Cuttack, and the settlements of Singapore and Malacca, without any licence whatever. But should Mr. Hudson, after his arrival at Bombay, proceed to, or reside in, any place or places within the territories which have come under the government of the East India Company since the 1st of January 1800, without a licence, the Governor in Council may (under section 3 of Regulation XII. of 1827) direct any magistrate within whose jurisdiction Mr. Hudson might be at the time, to arrest and convey him to the Presidency. If, however, in conveying Mr. Hudson to the Presidency, it would be necessary to pass through any place which was within the territories under the Company's government previously to the 1st of January 1800, it appears to me that the right of the Governor in Council to arrest him would then be at an end, and that he ought then and there to be set at liberty. In case any arrest of Mr. Hudson should hereafter take place, those who may be entrusted with the carrying it out must be careful to bear in mind the distinction as to the places under the government of the East India Company before and after the 1st of January 1800, made by the Act of Parliament referred to, otherwise such arrest may *ab initio* be, or subsequently become, illegal. 3 & 4 Will. 4, c. 85, s. 81.

Mr. Hudson cannot be detained under surveillance at Bombay, or deported back to England, as suggested by Brigadier-General Lawrence.

(signed) *Arthur J Lewis*,
Bombay, 5 February 1858. Advocate-General.

(True copy.)

(signed) *J. P. Bickersteth*,
Honourable Company's Solicitor.

(True copy.)

(signed) *H. L. Anderson*,
Secretary to Government.

From *E. N. Hudson*, Esq., to *H. L. Anderson*, Esq., Political Secretary, Bombay.

Sir,

REFERRING to the conversation when I had the pleasure of seeing you on Saturday last, I beg to be furnished, if the Right Honourable the Governor see no objection, with copies of the letter of Brigadier-General Lawrence, and of the order made thereon by the Supreme Government.

When I receive these documents I will at once give a complete and frank

explanation of any of the matters to which they may point, and shall be happy to afford all the information in my power in reference to any subject on which it may be deemed desirable by Government to obtain it.

Pending this, I pledge myself not to attempt to quit this island, and I trust that the surveillance of the police, which is not only derogatory to my honour, but may be very injurious to my interests, may immediately cease.

I have, &c.

Adelphi Hotel, Byculla, Bombay, 6 February 1858.

(signed) *E. N. Hudson.*

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

Resolution by the Honourable Board, dated 8 February 1858.

Resolved,

That Mr. Hudson be informed that Government will permit him to reside in any part of the Bombay Presidency, but cannot permit him to proceed into foreign territory until the permission of the Government of India shall have been received. A reference should be made to the Government of India, and copy of Brigadier-General Lawrence's letter should be transmitted to Calcutta by express.

(signed) *Elphinstone.*
H. Somerset.
A. Malet.
H. W. Reeves.

(True copy.)

(signed) *H. L. Anderson,*
Secretary to Government.

From the Vakeel to his Highness the Maha Rajah of Jodhpore to the Right Honourable Lord *Elphinstone*, G. C. H., &c. &c. &c.

My Lord,

I beg to approach your Lordship under very painful and distressing circumstances. By your Lordship's order, as I am informed, I have been taken into custody, and am now with my secretary, Khirat Allie Khan Bungush, a prisoner in the hands of the police. My pain at the position in which I suddenly find myself is mingled with astonishment, that I should have had the unhappiness to fall under your Lordship's displeasure, which can only have arisen from the false accusation of some enemy, desiring to injure me and my reputation.

I have the happiness and good fortune to have secured so much of the confidence of his Highness the Maha Rajah of Jodhpore as to have been appointed by him vakeel, for the purpose of urging the claim of his family to the raj of Ahmednuggur. In this capacity I have resided in England for the last seven years; and my petition, setting forth his Highness's claim, was, in the last Session of Parliament presented to the Honourable the House of Commons, but, at so late a period of the Session, that many influential friends I had the good fortune to secure, determined to defer raising a debate upon it until the present Session, and it was suggested to me to proceed to Jodhpore during the recess, in order that the prince my master might be fully informed of the efforts that had been, and were to be made, in his behalf; accordingly I made arrangements to leave England, accompanied by Mr. E. N. Hudson, of London, who has interested himself greatly in behalf of his Highness and myself. In contemplation of quitting England I deemed it my duty to solicit, and was honoured with interviews with the Honourable the Court of Directors and the Right Honourable the President of the Board of Control. On these occasions Mr. Hudson fully explained to the Chairs and the Right Honourable President my wish to proceed to Jodhpore, and his intention to accompany me, and not the slightest displeasure was evinced by either of the authorities. They were condescending enough to send letters to my address, approving the conduct pursued by his Highness in the

the present crisis, which letters I have now with me, and trust I may have an opportunity to submit them for your Lordship's inspection. The Right Honourable President was so kind as to say that a letter would be addressed to his Highness, acknowledging his services, by Her Majesty's Government, for which I was to apply to the Government of this Presidency, where it would await me. After a very long passage, *vid* the Cape of Good Hope, we reached this place on the 4th instant, and on the 6th I found myself a prisoner by your Lordship's order.

Your Lordship may conceive that I am bitterly grieved at this unexpected and undeserved proceeding, and I humbly entreat that I will be informed of the nature of my supposed offence, in order that I may at once clear myself from the imputations that have been made against me; and I trust your Lordship will believe my anxiety that this should be done at once is less on my own account than that of my master, who, I fear, will be deeply grieved that a servant representing him should be considered capable of doing an act or harbouring a thought hostile to the British Government, towards which his Highness has evinced such unwavering and devoted attachment. Begging to be forgiven for trespassing so long on your Lordship's most valuable time,

I have, &c.
(signed) *Syed Uckber Ally*,
Vakeel to his Highness the Maha Rajah of Jodhpore.

Bombay,
8 February 1858.

(True copy.)
(signed) *H. L. Anderson*,
Secretary to Government.

CYPHER MESSAGE.

From Mr. *Anderson*, Secretary to Government, Bombay, to the Under-Secretary to Government of India, in the Foreign Department, Calcutta.

PLEASE to have the following message sent to the Secretary with the Governor-General.

General Lawrence some time ago requested this Government to deport, or at least to detain in Bombay, a Mr. Hudson, an agent of the Maha Rajah of Jodhpore, who was expected from England. He gave no reasons for the measures proposed. Mr. Hudson has now arrived, and the law officers say he can neither be deported nor detained. The Government has accordingly told him he may go to any part of the Bombay Presidency he chooses, but not into foreign territory. This will keep him out of Jodhpore and Rajpootana generally. Instructions from Governor-General solicited.

(signed) *H. L. Anderson*,
Secretary to Government.

10 February 1858.

(True copy.)
(signed) *H. L. Anderson*,
Secretary to Government.

No. 495 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to Brigadier-General *Lawrence*, Governor-General's Officiating Agent for the States of Rajpootana.

Sir,

I AM directed by the Right Honourable the Governor in Council to acknowledge the receipt of your letter, No. 2, dated the 25th December 1857, and to inform you that the Jodhpoor Vakeel Syed Akbar Allee, accompanied by the English attorney alluded to by you, and a native secretary named Khirat Allee Khan, have arrived in Bombay by the steamer "Bombay Castle."

2. The vakeel and his native secretary have been arrested, and will be kept

under restraint until this Government has been informed by you whether they may be permitted to proceed to Jodhpoor.

With respect to Mr. Hudson, the law officers of Government are of opinion that he can neither be deported nor detained in Bombay. He has accordingly been informed that he may go to any part of the Bombay Presidency he chooses, but not into foreign territory. This will keep him out of Jodhpoor and Rajpootana generally.

On the receipt of the Governor-General's instructions regarding Mr. Hudson, a further communication will be addressed to you on the subject.

I have, &c.
(signed) *H. L. Anderson*,
Secretary to Government.

Bombay Castle,
10 February 1858.

(True copy.)
(signed) *H. L. Anderson*,
Secretary to Government.

No. 1 of 1858.—Secret Department.

From *H. L. Anderson*, Esq., Secretary to Government, Bombay, to *G. F. Edmonstone*, Esq., Secretary to the Government of India, with the Right Honourable the Governor-General, Allahabad.

Sir,

Adverting to my letter to your address, No. 31, of yesterday's date, a copy of which is annexed for convenient reference, I am directed by the Right Honourable the Governor in Council to state that the following message has this day been sent to the Under-Secretary to the Government of India in the Foreign Department, for communication to you at Allahabad :—

"General Lawrence some time ago requested this Government to deport, or a least to detain in Bombay, a Mr. Hudson, an agent of the Maharaja of Jodhpore, who was expected from England. Mr. Hudson has arrived, and the law officers say he can neither be deported nor detained. The Government has accordingly told him he may go to any part of the Bombay Presidency he chooses, but not into foreign territory. This will keep him out of Jodhpoor and Rajpootana generally. Instructions from the Governor-General are solicited."

2. I am on this occasion desired to report the arrival by the steamer "Bombay Castle" of several persons in the employ of the Queen of Oude, and to state that they have been arrested, and will be kept in restraint until the pleasure of the Right Honourable the Governor-General of India is communicated to this Government.

I have, &c.
(signed) *H. L. Anderson*,
Secretary to Government.

Bombay Castle, 10 February 1858.

(True copy.)
H. L. Anderson,
Secretary to Government.

No. 603.—Foreign Department.

From the Officiating Secretary to the Government of India to the Secretary to the Government of Bombay.

Sir,

With reference to the letter No. D, dated the 25th December last, addressed to you by the officiating agent in Rajpootana, requesting that Mr. Hudson, *en route* to Jodhpoor, as an agent to his Highness the Rajah of Marwar, may be detained in Bombay under surveillance, I am directed by the Honourable the President in Council to forward the accompanying copy of a letter from the officiating

officiating agent, No. 431 A, dated 26th December last on the subject, and of my reply thereto of this date, and to request that in the event of Mr. Hudson not having left Bombay, he may be warned of the course which the Government will take if he attempts to visit Jodhpoor.

I have, &c.
(signed) *C. Beadon*,
Officiating Secretary to the Government of India.

Fort William,
8 February 1858.

No. 431 A, of 1857.

From Brigadier-general *G. St. P. Lawrence*, Officiating Agent, Governor-General, for the States of Rajpootana, to *G. F. Edmonstone*, Esq., Secretary to Government of India.

Sir,

I HAVE the honour to enclose a copy of my letter to the Secretary to Government, Bombay, requesting that a Mr. E. N. Hudson, now *en route* to Jodhpoor, as an agent to his Highness the Rajah of Marwar, may be detained in Bombay under surveillance.

2. I have to beg that I may be favoured with the instructions of the Government of India as to the steps to be adopted with respect to Mr. Hudson.

3. I have seen Mr. Hudson's own letters to the late Captain G. H. Monck Mason's relations in London, and entertain no doubt of his being about to undertake the management of the Marwar Raja's Ahmednuggur grievance. His arrival at, or residence in Jodhpoor now, would materially complicate and obstruct our agent's action at that Court.

I have, &c.
(signed) *G. St. P. Lawrence*,
Officiating Agent, Governor-General.

Rajpootana Agency, Ajmere,
26 December 1857.

No. 602.—Foreign Department.

From the Officiating Secretary to the Government of India, to the Officiating Agent to the Governor-General for the States of Rajpootana.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 431 A, dated the 26th December last, forwarding a copy of your address to the Secretary to the Government of Bombay of the 25th idem, requesting that Mr. E. N. Hudson, *en route* to Jodhpoor, as an agent to his Highness the Rajah of Marwar, may be detained in Bombay under surveillance.

2. Considering the great importance of preventing Mr. Hudson from entering or remaining in Jodhpoor in the present state of the country, the Honourable the President in Council authorises you to prevent him from doing so, or to remove him if he is already there, and if necessary, to send him back to Bombay.

3. I am directed to forward for your information, the accompanying copy of a letter this day addressed to the Secretary to the Government of Bombay on the subject.

I have, &c.
(signed) *C. Beadon*,
Officiating Sec. to the Government of India.

Fort William,
8 February 1858.

(True copies.)
(signed) *C. Beadon*,
Officiating Secretary to the Government of India.

(True copies.)
(signed) *H. L. Anderson*,
Secretary to Government.

RESOLUTION by the Honourable Board.

RESOLVED, that the substance of the letter from the Government of India be communicated to Mr. E. N. Hudson.

(signed) *A. Malet.*
Elphinstone.

20 February 1858.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

From *Syed Ackbur Ally*, Vakeel to his Highness the Maharajah of Jodhpoor, to *H. L. Anderson*, Secretary to Government, Bombay.

Sir,

1. BEING very much inconvenienced by the retention in the hands of the police authorities, of the various papers and documents belonging to me, of which they took possession on the 10th instant; and as I fervently trust that the Government, when kind enough to order the release of myself and secretary from custody, felt fully convinced of the falsity of any charge that had led to our arrest, I have most respectfully to request that those papers may be returned at the earliest possible moment.

2. I also take the present opportunity to solicit the permission of Government for the despatch to his Highness the Maharajah of Jodhpore of two cases now lying at the custom-house together, containing two double and one single barrelled rifles, one pair of pistols, and two pairs of revolvers, &c. These arms were purchased by me in London for his Highness's own private use. I have advised him, that they are on their way, and respectfully venture to hope that Government will not see any objection to their being forwarded to him forthwith.

Soliciting a favourable reply,

I have, &c.

(signed) *Syed Ackbur Ally,*
Vakeel to his Highness the Maharajah of Jodhpoor.

Adelphi Hotel, Byculla,
26 February 1858.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Right Honourable the Governor.

RESOLVED, that the Commissioner of Police be directed to return to the Vakeel of the Maharajah of Jodhpore his papers.

That the Commissioner of Customs be instructed to allow the two cases containing arms for the use of the Rajah to pass, and to be forwarded to the Rajah.

(signed) *Elphinstone.*

1 March 1858.

MINUTE by the Honourable Mr. *Malet*, concurred in by the Honourable Mr. *Reeves*.

Brigadier-general G. Lawrence should be informed of these proceedings from the first arrival of the vakeels.

(signed) *A. Malet.*
H. W. Reeves.

2 March 1858.

(True copies.)
(signed) *H. L. Anderson,*
Secretary to Government.

No. 367 of 1858.—Secret Department.

From *Richard Spooner*, Commissioner of Customs, Salt and Opium, to *H. L. Anderson*, Esq., Secretary to Government, Bombay.

Sir,

With reference to your endorsement, No. 438, dated the 6th instant, on an extract from a letter from the Commissioner of Police, Bombay, No. 91, dated the 5th idem, I have the honour to inform you that Messrs. Thacker & Co. have requested me to inform them whether there is any objection to the delivery to them of the items noted in the margin, which are intended for the Rajah of Joudpoor, as they hold bills of lading for the same. These items, I might add, did not come out in the steamer "Bombay Castle," with the Vakeel of Joudpoor and party, but have arrived by the overland mail.

3 Rifles,
4 Revolvers,
2 Single-barrel pistols, and
Cartridges for all.

2. I accordingly solicit the orders of Government on the subject.

I have, &c.
(signed) *Richard Spooner*,
Commissioner of Customs, Salt and Opium.

Office of Commissioner of Customs,
Salt and Opium, 3 March 1858.

(True copy.)
(signed) *H. L. Anderson*,
Secretary to Government.

Resolution by the Honourable Board.

Resolved, that the Right honourable the Governor in Council has already given orders that the arms alluded to be allowed to pass; whether they are given to the Raja's vakeels or to his agents, Messrs. Thacker & Co., can be settled between the vakeels and Messrs. Thacker & Co.

(signed) *Elphinstone.*
A. Malet.
H. W. Reeves.

7 March 1858.

(True copy.)
(signed) *H. L. Anderson*,
Secretary to Government.

No. 138.—Foreign Department.

From the Secretary to the Government of India with the Governor-General to the Secretary to the Government of Bombay.

Sir,

I am directed by the Governor-General to acknowledge the receipt of your letter, dated 10th instant, No. 1, and in reply, to refer you to the orders already issued respecting the English attorney engaged by the Rajah of Jodhpore.

2. With regard to the Oude people mentioned in the 2d paragraph of your letter, I am desired to request, that they be kept under strict surveillance for the present, and not allowed to leave Bombay. You will be good enough to submit a return of their names and condition for the information of his Lordship.

I have, &c.
(signed) *G. F. Edmonstone*,
Secretary to the Govt. of India,
with the Governor-General.

Camp Allahabad,
19 February 1858.

(True copy).
(signed) *H. L. Anderson*,
Secretary to Government.

No. 786.—Foreign Department.

From the Officiating Under Secretary to the Government of India to the Secretary to Government of Bombay.

Sir,

I AM directed to acknowledge the receipt of your letter dated the 9th February, No. 31, respecting Mr. Hudson, and, in reply, to inform you that the President in Council is of opinion that if Mr. Hudson should proceed through any part of the territories which were not in the possession of the East India Company on the 1st January 1800, with a view to proceeding to Rajpootana, he should be stopped and dealt with under the advice of the Advocate-general, for a violation of the 82d section of the 3 & 4 Will. 4, c. 85.

I have, &c.

Fort William,
23 February 1858.

(signed) *J. W. Dalrymple,*
Officiating Under Secretary to the Government of India.

(True copy).
(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Honourable Board.

RESOLVED, that the substance of this letter be communicated to Mr. Hudson.

10 March 1858.

(signed) *Elphinstone.*
A. Malet.
H. W. Reeves.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

From *Syed Uckber Ally* to *H. L. Anderson*, Esq., Secretary to Government, Bombay.

Sir,

I BEG to acknowledge receipt of your letter of the 4th instant, informing me that the Right honourable the Governor in Council has been pleased to direct the return of my papers, which have since been handed over to me by the Commissioner of police.

I shall ever remember with great pain, that even upon a totally unjust and most malicious charge, I should have temporarily incurred the suspicion of a Government for which I feel the most devoted attachment and loyalty, and towards which I have ever humbly endeavoured to act in a manner to avoid giving offence; but now that the innocence of myself and secretary is completely proved by the many respectable witnesses whose testimony has been obtained by the police authorities, I venture humbly, but earnestly, to entreat the Right honourable the Governor to favour me with an intimation that any suspicion which existed with regard to my secretary or myself is removed.

My arrest having caused me a detention of a month at this Presidency, with much consequent injury and expense, and his Highness having complained of delay, I have most respectfully to urge the Right honourable the Governor to grant me permission to proceed with my secretary at once to Jodhpoor, and trust his Lordship will do so without hesitation, remembering the zeal and energy displayed by his Highness the Maharajah from the first moment of the mutiny to the present time, and the services which it has been his honour and happiness to render to Government in this crisis.

Anxiously awaiting a favourable reply,

I have, &c.

Bombay, 8 March 1858.

(signed) *Syed Uckber Ally.*

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Right Honourable the Governor.

RESOLVED, that the vakeel and his secretary be permitted to proceed to Jodhpoor.

10 March 1858. (signed) *Elphinstone.*

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

MINUTE by the Honourable Mr. *Malet,* without date.

I WOULD first reply to him, informing the vakeel of this proceeding.

(signed) *A. Malet.*

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

MINUTE by the Honourable Mr. *Reeves.*

THIS would, I think, be advisable, on the supposition that General Lawrence's wishes have not yet been notified.

11 March 1858. (signed) *H. W. Reeves.*

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

(No. 2418.)

No. 334 of 1858.

From Brigadier-general *G. St. P. Lawrence,* Officiating Governor-General's Agent, Rajpootana States, to *H. L. Anderson,* Esq., Secretary to the Government of Bombay.

Sir,

WITH reference to your letter, No. 495, of the 10th February 1858, and the previous correspondence relating to the attorney, Mr. Hudson, a vakeel Acbar Ally, and his native secretary Khyrat Ally Khan, landed in Bombay from England on the part of the Maharaja of Jodhpoor, I have the honour to forward for the information of the Right honourable the Governor, copy of a letter, No. 13, of the 6th instant, from the Officiating Political Agent, Jodhpoor, on this subject, and of a khurreeta addressed by me this day to his Highness of Jodhpoor. With translation.

2. This chief's reply regarding these parties shall on receipt be communicated to his Lordship.

I have, &c.
(signed) *G. St. P. Lawrence,*
Officiating Governor-General's Agent.

Rajpootana Agency,
Camp Serana, 11 March 1858.

Enclosure in No. 334 of 1858.

(No. 13.)

From Major *R. Morrieson,* Officiating Political Agent, Jodhpore, to Brigadier-general *G. St. P. Lawrence,* Officiating Agent, Governor-General, Rajpootana.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 240, of the 24th ultimo, forwarding for remark copy of a letter from the Secretary to the Government of Bombay, on the subject of the detention at Bombay of two agents of the Jodhpoor raj, arrived from England in in company wth Mr. Hudson, attorney.

2. In reply I beg to observe, that the point on which the Maharajah of Jodhpoor appears to be open to blame, is in sending vakeels to England for the purpose of prosecuting an appeal without giving any previous official intimation to Government authorities, and bringing out a European attorney without considering it at all requisite to give notice of his intentions, and requesting leave to receive him at his court.

3. If any European British subject has a right to enter the country, and proceed straight to be employed by a native durbar without any reference to or question from Government, then this would settle Mr. Hudson's case; and I suppose he could also proceed at once to Jodhpoor without let or hinderance, and if he can do so, I suppose the Rajah's own agents could do the same, unless they are suspected or accused of something more sinister.

4. But, as from the treatment of Mr. Hudson, it is clear that no European has this right, then the course must be adopted by him and the Maharajah by which he can obtain it; and as the Maharajah's right to appeal in favour of the restoration of his Ahmednuggur estate cannot be questioned, it appears to me that the best course to pursue would be to acquaint him that these agents have intimated their relationship to him, and to inquire whether he acknowledges them, and how he should have sent them to England, and have brought out a European attorney without giving any intimation of his wish or intention, and what these wishes and intentions really are; and after he has replied to these, there will be no objection to allowing all the parties to proceed to Jodhpoor, and let the appeal take its course; though the Maharaja might be admonished for having thought it necessary to act in a manner which looked so underhand, in a case in which he was at full liberty to act openly without any risk of giving offence.

I have, &c.
(signed) *R. Morrieson*,
Officiating Political Agent, Jodhpoor.

Camp Pallee, 6 March 1858.

(True copy.)
(signed) *E. C. Impey*,
Assistant Agent Governor-General.

(True copies.)
(signed)
Secretary to Government.

Enclosure in No. 334 of 1858.

TRANSLATION of a Khureeta from the Officiating Governor-General's Agent, Rajpootana States, to the Maharajah of Jodhpoor, dated Camp Surana, 11 March 1858.

After usual compliments:

1. I HAVE received a letter from the Government of Bombay, informing me that two native vakeels, named Ackbar Ally, and Khyrat Ally Khan, with an English attorney, a Mr. Hudson, have landed in Bombay from London, and report themselves to be vakeels on the part of the Maharajah of Jodhpoor, in the case of appeal in the Ahmednuggur succession.

His Lordship the Governor has arrested the two vakeels till their statement is sifted.

2. As your Highness is a well wisher and friend of the British Government, and the prosperity of yourself and State have ever since treaties were entered into between us been maintained by that Government, and more especially have lately received aid from Government in regard to your rebel thakoors of Marwar, and will ever thus be dealt with by the British Government; and as you know well that Government will ever act towards you with justice and truth, I can hardly believe that you have summoned these people secretly; for had you wished to summon them, you would surely have reported it to Government, and done it openly, and not in an underhand manner, which is contrary to usual practices, and the ways of friendship.

3. Since

3. Since it is requisite to inquire this of you, I write to desire you to inform me in detail of this matter, and to acquaint me what your wishes are regarding these parties. Do you want to summon them or no? I will let the Government of Bombay know your reply.

4. You must know that you will only incur loss by summoning an attorney from England, for the political agent, Jodhpoor, could do all for you that the ttorney can; and these attornies only care about their own profit.

(Translated.)

(signed) *E. C. Impey*,
Assistant Agent, Governor-General.

(True copies.)

(signed) *H. L. Anderson*,
Secretary to Government.

Resolution by the Honourable Board.

(No. 2419.)

Resolved, that the persons calling themselves vakeels of the Maharajah of Jodhpoor, be informed that Brigadier-general Lawrence has addressed a letter to the Maharajah regarding them, and on receiving his reply, has promised to communicate again with this Government.

(signed) *Elphinstone.*
A. Malet.
H. W. Reeves.

22 March 1858.

(True copy.)

(signed) *H. L. Anderson*,
Secretary to Government.

No. 476 of 1858.

From Brigadier-general *G. Lawrence*, Officiating Agent, Governor-general, for the States of Rajpootana, to *H. L. Anderson*, Esq., Secretary to the Government of Bombay.

Sir,

In continuation of my letter of the 11th ultimo, No. 334, relative to the attorney and vakeels of the Maharajah of Joudpoor, recently arrived in Bombay, I have the honour to forward, for the information of the Right honourable the Governor in Council, copy of a letter, dated the 12th instant, No. 16, from the Officiating Political Agent, Joudpoor, with translation of a khureeta, to my address from the Maharajah on the subject.

2. I have also the honour, for his Lordship's information to state, that I see no objection to the parties now being allowed to proceed to Joudpoor.

I have, &c.
(signed) *G. St. P. Lawrence*,
Officiating Agent, Governor-General.

Rajpootana Agency,
Camp Kotah, 16 April 1858.

Enclosure in No. 476 of 1858.

No. 16 of 1858.

From Major *R. Morrieson*, Officiating Political Agent, Joudhpoor, to Brigadier-general *G. S. P. Lawrence*, Officiating Governor-General's Agent for the States of Rajpootana.

Sir, Camp Kotah, 12 April 1858.

I HAVE the honour to enclose a khureeta, together with its translation from the Maharajah of Joudhpoor, in reply to the one transmitted with your letter, No. 340, of the 11th ultimo, on the subject of the engagement of Mr. Hudson to conduct an appeal to the Privy Council against the decision of Government with respect to his right to his former principality of Ahmednuggur.

2. The statement of the Maharajah with regard to the cognisance of the political agent of his intention of appealing home, is only partially correct, I believe. It was known to them that the Rajah had privately sent vukeels home, but it is just as true that he never formally signified his intention of appealing, though he did all he could to induce the political agent to reopen the dispute, and had to be informed that the Government, having given its final decision on the case, could not consent to have it litigated anew.

I have, &c.
(signed) *R. Morrieson*,
Officiating Political Agent.

Joudpoor Political Agency Office,
12 April 1858.

(True copy.)
(signed) *W. H. Beynon*,
Assistant Agent Governor-General.

Enclosure in No. 476 of 1858.

TRANSLATION of a Khureeta from the Maharajah of Jodhpore, to the Address of the Officiating Governor-General's Agent for Rajpootana, dated 20 Shabun, 1274 Hijree (5 April 1858, A.D.)

AFTER compliments and recapitulation of Brigadier-general Lawrence's khureeta of the 11th March, I beg to state, that several years ago I sent Syud Akbar Ally to London only because the Company's officers in this country refused to listen to my representations regarding the Ahmednugger case. Of this, the Government had all due information. I gave my vukeel instructions, also, that he was to come back to me, if he wanted any more precise orders. When he had arrived in London, he made use of Mr. Hudson and Khirat Ali Khan to bring forward his case; and now that he finds that farther instructions are necessary, he has brought out Mr. Hudson and Khirat Ali to be more particularly informed in the case. I have now learnt that Mr. Hudson has been prevented from proceeding to Jodhpore, and that my two agents have been placed in surveillance by the Bombay Government; and I was about to refer the subject to the political agent for his advice when your letter arrived, and has relieved my anxiety on the subject. I have, therefore, to request that you will be good enough to apply to the Government to give permission to the parties to proceed to Jodhpore. But, if there should be any objection to Mr. Hudson's coming, it is not a matter of any consequence, for I have invariably studied to make my own pleasure subservient to that of the illustrious British Government, and to consider the prosperity and happiness of this State as entirely dependent on the pleasure of the British authorities. The friendship and interests of the two States are firmly united and permanent as the stars of heaven. How should it be possible that a friendship so cemented and established for so long a time should run the chance of extinction by the flame of any doubt, and interfere between the intimacy of such bosom friends? And as for what you have so kindly written, that the political agent could have done for me all that my vakeel could, this is altogether correct and true, and I

 should

should have been glad of it, and nothing, indeed, would please me better than that so powerful a friend as yourself should cast a kindly regard in a righteous cause, and on the bridal hands of my longing desire, apply the hinna dye of consent, and keep the garden of our friendship continually watered with perennial streams of kind regard, that it may keep green and fresh for ever. In other words, that you would take the above case into your gracious consideration, and endeavour to obtain for it a rehearing by the Government, and thus render a favour of eternal duration, observable by all as the drop on the ear-ring and celebrated as an evidence of friendship to all beneath the blue sky of Rajpootana. In this event, there will be no necessity for any vilayut for me; this would be vilayut and sudder, both united; usual complimentary close.

(Translated.)
(signed) *R. Morrieson,*
Officiating Political Agent.

(True copy.)
(signed) *W. H. Beynon,*
Assistant Agent, Governor-General.

(True copies.)
(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Honourable Board.

RESOLVED, That the vakeels of the Raja of Jodhpoor be informed that they are now permitted to proceed to Jodhpoor.

That receipt of Brigadier-general Lawrence's letter be acknowledged, and that he be informed that the necessary intimation has been made to the vakeels.

(signed) *Elphinstone.*
A. Malet.
H. W. Reeves.

3 May 1858.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

No. 1305 of 1858.

From Brigadier-general *G. Lawrence,* Officiating Agent, Governor-General, for the States of Rajpootana; to *H. L. Anderson,* Esquire, Secretary to the Government of Bombay.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 4144, of the 3d ultimo, enclosing copy of a despatch from Her Majesty's Principal Secretary of State, No. 1, of 22d September last, and requesting me to acquaint the Bombay Government with the reasons which led me to recommend that Mr. Hudson be prevented from proceeding to Jodhpoor.

2. In reply, I would first beg to express my regret that Mr. Hudson should have been put to inconvenience and expense, or deemed himself aggrieved. Nothing was further from my intention, in requesting that he should not be permitted to proceed to Jodhpoor, than to put him to either, or to cast any suspicion on the character of that gentleman.

3. Upon reflection, I feel assured that, in common with the rest of our countrymen, he will allow that, considering the complicated difficulties which attended our Indian administration at the time, each person in authority was bound in

his duty to his country to judge, and act decisively on such judgment, as might, in those peculiar circumstances, be considered best: and he alone who was on the spot could be cognizant of what was best to be done. Standing on a mine which might at any moment explode in a direction unlooked for, I felt that that critical period was not a time when the customary routine of events could be followed.

4. In this view I deemed it highly unadvisable that Mr. Hudson should be then permitted to enter the Marwar territory, for reasons both of a general and local nature. I held that the appearance of an English gentleman, whose avowed object it was, on the part of a native prince, to prosecute a suit wherein Government had passed its final decision, would be most prejudicial at that time to the interests of Government, as conveying the impression to the native mind that the time of our weakness was chosen as the fittest opportunity to attack its decision by means of a person independent of the constituted Indian Government.

5. I apprehended such a course at any place, in such a crisis, would be inimical to our interests, as further tending to unsettle the minds of the natives by seeing their ruler placed in *juxta position* with the British power; and disturbing the unity of action and unanimity between the chief and the Government accredited agent (his adviser), which is so necessary for the proper carrying out of measures for the mutual interest of both parties.

* *Sic in orig.*

6. Locally, my reasons were stronger. Shortly anterior to the period of Mr. Hudson's arrival, one of the great feudal chiefs of Marwar (Awah) had defied the power of both the British Government and his own prince, the Maharajah of Jodhpoor. This chief, long disaffected, taking advantage of our troubles, had openly revolted and called to his aid the mutinous Jodhpoor legion, composed of Hindoostani soldiery, drilled and organized by British officers. With the legion's assistance, aided by the treacherous conduct of other Marwar chiefs, and some of the Maharajah's troops, the forces of his Highness had lately suffered a severe defeat, with the loss of its guns and commander-in-chief, followed at a subsequent period, by the murder of the Political Agent, Captain Monck Mason.

7. In addition to this, and the fact of the Awah chief and others being in open rebellion, with the generally disturbed state of the country, and the knowledge that all the feudal chiefs of Marwar were far from well disposed to the Maharajah, so much so that a late political agent, Sir R. Shakespear, in June 1857, apprehended that his Highness might be dethroned by them; and having to deal with a wild people in such unsettled times as we have lately passed through, with hardly a European soldier at command, it behoved me by every means in my power to prevent the probability of adding to our complications, or risking further collision, which most probably would have arisen, had the chiefs and people discovered any apparent want of cordiality between their ruler and ourselves.

8. The foregoing are some of the principal reasons of my desiring the detention of Mr. Hudson in Bombay, to which might be added, that it would at the time have been at the risk of his life had he travelled through Marwar. Subsequently, when matters were more settled, the country quieter, and we stronger, in my letter, No. 476, of the 16th April 1858, I communicated to you that Mr. Hudson's further detention from Jodhpore was unnecessary. It is known that my proceedings met the approval of the Government of India.

9. In conclusion, I would state that recently, when visiting the Maharajah, he told both Captain Brooke, the officiating political agent, and myself, that he has now no wish to see Mr. Hudson at Jodhpore; indeed, that he had directed him to return from Bombay to England, paying all his expenses and salary.

I have, &c.
(signed) *G. St. P. Lawrence,*
Officiating Agent, Governor-General.

Rajpootana Agency, Camp Jodhpoor,
13 December 1858.

(True copy.)
(signed) *H. L. Anderson,*
Secretary to Government.

RESOLUTION by the Board.

RESOLVED, that a copy of this letter be forwarded to Her Majesty's Secretary of State for India, with reference to previous correspondence. It may be added, on the part of this Government, that the Right honourable the Governor in Council considers that any further agitation at that time of the Rajah of Jodhpoor's claims to Ahmednuggur, which had been awarded to the Rajah of Edur by the Supreme Government, might have added to the many difficulties of the complications which have arisen in the Mahee-Kanta.

(signed) *Elphinstone.*
24 December 1858. *A. Malet.*

(True copy.)

(signed) *H. L. Anderson,*
Secretary to Government.

To the Right Honourable the Secretary of State for India in Council.

8, Hereford-square, Brompton,
My Lord, 28 December 1858.

REFERRING your Lordship to the letter addressed by me to the late Court of Directors on the 19th of July last, and to the reply thereto, dated the 21st August, I am anxious to be informed whether the full report of the circumstances which led to my detention at Bombay has yet been received; and, if so, that I may be favoured with a copy of that document and its addenda, if any. I venture to express a hope that such report is of a nature to convince your Lordship that the course pursued towards me by the local government was without legal or technical justification.

It is my earnest wish again to leave England for India if possible by the Overland route, on the 2d proximo; I therefore respectfully request your Lordship in Council immediately to grant me the necessary authorisation to proceed to Jodhpore.

I beg also to invite your Lordship's attention to my claim to pecuniary compensation for the injury I have sustained, and to request that passages to and from Bombay may be placed at my disposal, leaving the final adjustment of the indemnity until my return to this country.

I have, &c.
(signed) *E. N. Hudson.*

Sir, India Office, 14 January 1859.

I AM directed by Lord Stanley to acknowledge the receipt of your letter of the 28th ultimo, and to inform you, in reply, that his Lordship in Council, not having yet received from the Government of Bombay the required information respecting the circumstances which induced the Governor-General's agent in Rajpootana to counsel your detention at Bombay, can at present only refer you to the letter of Mr. Dickinson, dated the 21st of August last.

I am, &c.
E. N. Hudson, Esq. (signed) *J. Cosmo Melvill.*
8, Hereford-square, Brompton.

To Sir G. R. Clerk, K.C.B., Under Secretary of State for India.

8, Hereford-square, Brompton,
8 February 1859.

Sir,

In connexion with my letter of the 28th December, and the reply thereto, dated the 14th ultimo, stating that Lord Stanley had not then received the required information respecting the circumstances which induced the Governor-General's agent in Rajpootana to counsel my detention in Bombay, I beg respectfully to know if such information has yet been received, and, if so, request to be favoured with a copy of the letter or letters conveying it.

At the same time, I again most respectfully urge his Lordship's attention to the matters brought under his notice in my former letters, and solicit his final decision upon them at the very earliest opportunity.

I have, &c.
(signed) *E. N. Hudson.*

Sir, India Office, 4 March 1859.

I am directed by the Secretary of State for India in Council to acknowledge the receipt of your letter of the 8th ultimo, and to inform you in reply that Lord Stanley has received a despatch from the Government of Bombay, enclosing a letter from Brigadier-general George Lawrence, stating at length that officer's reasons for counselling your detention at Bombay. It is contrary to the practice of this department of Her Majesty's Government to furnish to private individuals copies of public despatches; but his Lordship desires me to state, that whilst neither the despatch of the Bombay Government, nor the letter of Brigadier-general Lawrence, casts any discredit or suspicion on your character and motives, they afford, in his Lordship's estimation, sufficient justification, on urgent political grounds, of the prohibition issued against the prosecution of your journey to Joudhpore. Whether the reasons for the prohibition against your proceeding to Joudhpore, which then existed, exist at the present time, his Lordship must leave it to the Government of Bombay to decide. It must, therefore, be left to them to exercise their discretion with respect to your movements after your arrival at that Presidency, should you desire to return to it.

I am directed further to add that the Maharajah of Joudpore is stated to have intimated to the political agent that he had no wish to see you; indeed, that he had directed you to return from Bombay to England, "and had paid all your expenses and salary."

(signed) *J. Cosmo Melvill.*

E. N. Hudson, Esq.,
8, Hereford-square, Brompton.

(True copies.)
(signed) *J. W. Kaye,*
Secretary in Political and Secret Departments.

India Office, 10 March 1859.

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on 26 June, 2018